



Degree Program in Politics: Philosophy and Economics

Course of Public Law

The Role of Kant's Categorical Imperative
in Constitutional Interpretation:
a Framework to Balance Fundamental Rights
in the Ilva Case

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Introduction

The Constitutional Interpretation process in contemporary democratic systems is increasingly characterized by a complex balancing act among competing fundamental rights and principles. In the Italian legal framework, this tension is particularly evident in cases where public interests, such as economic development, collide with individual and collective rights, like environmental protection and public health. Within this intricate normative landscape, ethical theory can provide a crucial compass to guide judicial reasoning.

Every Constitution is, in its very essence, a legal text permeated by moral tensions. It proclaims rights that demand to be inviolable, yet articulates them in open-ended, general, and often ambiguous terms; it claims universality while being rooted in a specific historical context; it enunciates supreme principles, and yet requires continuous mediation among heterogeneous interests and conflicting values. In this scenario, constitutional interpretation cannot be confined to a mere exegetical operation: it becomes a theoretical arena where law and philosophy intersect, and where the balancing of rights reveals itself to be an act of rational responsibility, even before being a strictly legal one.

This thesis explores how Kant's Categorical Imperative can serve as a normative framework for constitutional rights balancing within the Italian legal system. Rather than suggesting a mechanical transposition of moral theory into judicial practice, it investigates how the formal structure of Kantian ethics - particularly the principles of universalizability, human dignity and the idea of a kingdom of ends - may function as a safeguard for the internal coherence of constitutional jurisprudence. Kantian thought, with its focus on the imperative to treat not only each person, but also every right as an end in itself, offers a profound limit to interpretative discretion and an anchor point against the arbitrariness that may threaten the practice of judicial balancing.

The relevance of this approach becomes clear in light of the increasing centrality of balancing methodologies in constitutional adjudication. While these methods aim to mediate between values in conflict, their normative indeterminacy can lead to a dangerous erosion of legal certainty if not rooted in a robust ethical framework. Kantian ethics offers

not a fixed set of outcomes, but a formal and universal moral logic capable of disciplining constitutional reasoning without undermining pluralism or democratic legitimacy.

This thesis unfolds along a theoretical-analytical trajectory structured in four chapters.

The first chapter reconstructs the notion of constitutional interpretation in the Italian legal system, focusing on the role of the Constitutional Court in mediating between fundamental rights. Particular attention is given to the concept of reasonableness as a key criterion for balancing conflicting constitutional principles, as well as to the inherent tension between moral absolutism and constitutional compromise.

The second chapter introduces and explains the core tenets of Kantian moral philosophy, pivoting on the Categorical Imperative and its three main formulations - universalizability, the end-in-itself and the kingdom of ends - and discussing their normative potential for legal reasoning in constitutional contexts.

The third chapter examines the judicial function from an ethical perspective, exploring the judge's role not only as interpreter of legal norms but also as a moral agent. It considers how Kantian ethics can inform a conception of adjudication that moves beyond instrumental rationality, toward a model of morally engaged judging that embraces coherence, internal consistency and normative responsibility.

The fourth and final chapter presents a detailed case study of the Ilva affair, a paradigmatic example of constitutional conflict involving economic, environmental and health-related interests. The case is analysed through a Kantian lens, evaluating whether the jurisprudence of the Italian Constitutional Court demonstrates an implicit adherence to the principles of the Categorical Imperative, particularly in its treatment of human dignity, legal coherence and the protection of vulnerable interests.

The aim of this work is not to propose an abstract theorization, but to explore the theoretical and practical possibility of reconnecting the act of constitutional interpretation to an ethics of public reason. More specifically, the thesis seeks to offer a concrete methodological contribution to the field of constitutional law by outlining how Kant's

Categorical Imperative, with its formal and universal moral logic, can serve as a normative threshold within the practice of judicial balancing.

Rather than replacing legal standards such as proportionality or reasonableness, the Kantian perspective is proposed as a critical criterion to evaluate whether constitutional compromises respect the intrinsic dignity of the individual and the coherence of legal reasoning. In doing so, the study aims to reinforce the normative integrity of constitutional law, integrating philosophical rigor within juridical applicability.

Ultimately, it invites us to reconsider one essential question, at the heart of every constitutional choice: can the rule we adopt today be willed as a universal law, free from exception, free from arbitrariness, and faithful to the idea of justice?

1 Constitutional Interpretation in Public Law

1.1 Definition of Constitutional Interpretation in the Italian Legal System

Constitutional interpretation refers to the process by which the meaning of constitutional provisions is determined and applied within a legal system, guiding the application of constitutional norms in legal practice¹. Within the Italian legal system, it involves interpreting the text of the Italian Constitution in order to understand its scope, application and the principles it embodies, resulting to be a crucial undertaking for the resolution of legal disputes and the protection of constitutional rights. Unlike ordinary statutory interpretation, which focuses on clarifying legislative texts, constitutional interpretation plays a fundamental role in shaping the legal and institutional framework of a country, particularly in legal systems based on rigid constitutions, such as the Italian one, where constitutional norms hold a superior hierarchical position and often require interpretation to adapt to evolving societal needs.

The need for constitutional interpretation arises due to the inherent characteristics of constitutional texts. Constitutions are, in fact, typically drafted in broad and abstract terms, incorporating fundamental principles and values rather than detailed legislative provisions: this abstract nature allows for flexibility and adaptability over time², but also necessitates judicial and doctrinal interpretation to clarify ambiguities, resolve conflicts between different constitutional provisions and ensure coherence within the legal order. In addition, constitutional interpretation serves as a tool for maintaining a balance between legal certainty and the dynamic evolution of legal norms: while stability is necessary to uphold the rule of law, the interpretation of constitutional principles must also reflect societal transformations and the changing needs of democratic governance. This dual function, ensuring both continuity and adaptability, highlights the complexity and significance of constitutional interpretation in the Italian legal order.

The inescapable consequence is that, being the specific character of constitutional norms composed around the principles-values relationship, it is also and even more entailed at

¹ Robert Alexy, *A Theory of Constitutional Rights* (Oxford: Oxford University Press, 2002), 47.

² Riccardo Guastini, *Interpretare, Costruire, Argomentare* (Torino: Giappichelli, 2011), 21–22.

the level of constitutional interpretation, in which there is an extension of the space and role of the interpreter (and interpretation)³.

The interpretative activity presupposes, in fact, a text, a single utterance or, more frequently, a set of linguistic utterances, from which to derive or ascribe a meaning, proposing a rule-meaning of one or more provisions. Hence, this operation presupposes a linguistic objectivity⁴ which awaits to be given meaning by the interpreter and is resolved in the formulation of another utterance that expresses its regulation. In this interpretative activity, however, it needs to be considered not only the objectivity of the text to be interpreted, but also the subjectivity of the interpreter: the “pre-comprehension” of human, cultural and social contexts as necessary means to fix the meaning of the utterances and to propose the norm. The interpretation process could be defined, therefore, like the encounter between an objectivity to be interpreted and an interpreting subjectivity, both immersed in an intersubjective context of meanings⁵.

Constitutional interpretation involves various methods and approaches that legal scholars and courts utilize to clarify constitutional provisions and apply them to specific cases. In the Italian legal system, in particular, the Constitutional Court and other legal actors manage to employ multiple interpretative techniques to ensure coherence and adaptability within the constitutional framework. The principal methods of constitutional interpretation include the following:

Literal Interpretation: this approach focuses on the plain meaning of the constitutional text, considering the ordinary sense of words as they were originally written; while this method ensures textual fidelity, it may sometimes lead to rigid or outdated applications that do not fully capture the evolving constitutional context.

Systematic Interpretation: this method examines constitutional provisions in relation to the broader legal system, considering the internal coherence of the Constitution and ensuring that different articles and principles are interpreted harmoniously rather than in

³ Franco Modugno, "Interpretazione costituzionale e interpretazione per valori," *Costituzionalismo.it*, 8 luglio 2005, <https://www.costituzionalismo.it/interpretazione-costituzionale-e-interpretazione-per-valori-2/>

⁴ Objective insofar as it is other than the subject-interpreter, not since it is unambiguously clear.

⁵ Neil MacCormick, *Legal Reasoning and Legal Theory* (Oxford: Clarendon Press, 1978), 91–92.

isolation; this approach results to be crucial in resolving apparent contradictions between constitutional norms.

Teleological Interpretation: also known as “purposive interpretation”, this method focuses on the underlying objectives and values that a constitutional provision seeks to promote; with it, judges and scholars analyse the historical, social and political purposes of the Constitution to which derive interpretations that align with its fundamental goals.

Evolutionary Interpretation: given that constitutions are designed to endure over time, such method allows for an adaptation of constitutional principles to contemporary societal changes; thanks to this approach, courts may interpret constitutional norms in a way that reflects new social, economic and technological developments, ensuring that the Constitution remains relevant and effective.

It is fundamental to underline that these interpretative methods are not mutually exclusive; rather, they are often combined in judicial reasoning to achieve a balanced and contextually appropriate understanding of constitutional provisions. In this sense, the starting point of the interpretative process is the text to which the meaning is ascribed, or on the basis of which the principle is constructed, drawing with it the retrospective value. The second moment is the question that the concrete case addresses to the interpreter-judge, while the third one is the choice of the norm deemed necessary and sufficient for the answer and the solution of the case. The fourth, in conclusion, is the definitive verification of that ascribed norm with reference to the original text.

1.1.1 Constitutional Court's Role and Functions

In the Italian legal system, constitutional interpretation is primarily entrusted to the Constitutional Court⁶, which has the exclusive power to review the constitutionality of laws and ensure their compliance with the Italian Constitution. Despite this, it is important to underline that constitutional interpretation is not solely the domain of the judiciary: it also involves scholars, legislators and public institutions which contribute to shaping constitutional meaning through academic discourse, legislative practice and institutional decisions. On the one hand, in fact, judges and executive bodies are distinct from and

⁶ Sergio Bartole, *Giudici e legislatori nella giurisprudenza costituzionale italiana* (Bologna: Il Mulino, 2017), 35.

“subordinate” to the legislature, because of the fact that they do not have to create the rules, but only to respect and apply them; on the other hand, legal practitioners cannot, while interpreting, at least not contribute to determining the rules to be respected and applied: not having to create the law, but, at the same time, doing it somehow.

Nevertheless, the Constitutional Court plays a central role in the process of constitutional interpretation: in the Italian legal system, in particular, it employs a nuanced approach, integrating the different above-mentioned interpretative techniques to address complex legal and constitutional issues effectively. As the highest authority on constitutional matters, it is responsible for ensuring that laws strictly conform to the Constitution, resolving conflicts between different branches of government and protecting fundamental rights. Additionally, the Court influences legislative and executive actions by setting constitutional limits and offering interpretative guidelines that shape policy-making⁷: its rulings contribute to the dynamic evolution of constitutional law, ensuring that the Constitution remains a living instrument capable of addressing contemporary legal and social challenges.

One of its primary functions is Judicial Review, which allows the Court to assess the constitutionality of laws and legislative acts. Such procedure can take different forms:

Abstract Review: the Court examines a law independently of a specific case, ensuring that it aligns with constitutional principles before or after its enactment.

Concrete Review: the Court intervenes in an ongoing case when a lower court raises a constitutional question, providing a binding interpretation.

Incidental Review: courts can suspend proceedings and refer a case to the Constitutional Court if they believe a law may be unconstitutional.

Among the various constitutional bodies, the Constitutional Court plays, unquestionably, a very preponderant role in constitutional interpretation, not only because of its institutional role, but mainly for the fact that, much more than from doctrine, from the Court itself have come the greatest contributions to the understanding of the pervasive role of fundamental rights in legal terms. Through the process of judicial review, the Court

⁷ Marta Cartabia, *Principi inviolabili e integrazione europea* (Milano: Giuffrè, 1995), 85.

has the unique power to declare laws unconstitutional, effectively nullifying their legal effect. This last assertion links the discourse to the peculiarity of the interpreting subject: with the constitutional text, it cannot be denied that the subject interpreter also covers a very special position⁸.

Basically, the Constitutional Court's role in constitutional interpretation is essential to maintaining the integrity of the legal system, protecting fundamental rights and ensuring that laws remain consistent with constitutional values. Through its interpretative and adjudicative functions, the Court manages to reinforce the rule of law and the democratic order in Italy.

1.1.2 Distinction between Constitutional Interpretation and Adjudication

A fundamental distinction in constitutional law is the one between constitutional interpretation and constitutional adjudication. While the two concepts are closely interrelated, in fact, they serve completely different functions and operate within different institutional frameworks into the legal system, even involving, both, the application of constitutional norms.

Constitutional interpretation refers to the theoretical and methodological process through which the meaning of constitutional provisions is determined, involving analysing constitutional text, structures and principles to which derive legal meanings and applications. This process is not limited to courts, but also involves legislators, legal scholars and political institutions, who contribute to shaping constitutional understanding through their interpretations and applications. Interpretation precedes adjudication⁹, since courts must firstly interpret constitutional provisions, before applying them in a given case.

Constitutional adjudication, on the other hand, refers to the judicial function of applying constitutional interpretation to resolve legal disputes. It is the process by which courts, particularly constitutional courts, determine whether laws, policies or governmental actions conform to constitutional requirements. Unlike interpretation, which is an ongoing and open-ended process, adjudication results in legally binding decisions that

⁸ Sabino Cassese, *Dentro la Corte: Diario di un giudice costituzionale* (Bologna: Il Mulino, 2015), 42.

⁹ Stephen A. Barber and James E. Fleming, *Constitutional Interpretation: The Basic Questions* (Oxford: Oxford University Press, 2007), 68.

directly affect legal norms and institutional practices, often arising in response to challenges brought before the court, requiring a resolution based on constitutional principles and precedents.

In the Italian legal system, also the process of constitutional adjudication is primarily carried out by the Constitutional Court, which reviews the constitutionality of laws and ensures their compliance with the Constitution. The Court's decisions establish, in fact, authoritative interpretations of constitutional norms, setting precedents that guide future cases. However, adjudication is necessarily constrained by procedural rules, case law and institutional limitations, distinguishing it from the broader and more flexible process of constitutional interpretation.

Understanding the distinction between constitutional interpretation and adjudication is crucial for analysing the role of Constitutional Courts and their impact on the legal and political system, differentiating the two procedures in their concrete application. While interpretation provides the intellectual framework¹⁰ for understanding constitutional norms, adjudication enforces these interpretations in concrete legal disputes, shaping the evolution of constitutional law through judicial decisions, but without being able to ignore the first procedure, which results to be a fundamental step for both the processes. Between these two functions, in fact, constitutional interpretation holds a great significance also for adjudication, basically being its foundation: actually, interpretation provides the conceptual framework that guides judicial decisions. Without a clear understanding of constitutional norms, in fact, adjudication would lack coherence and consistency, leading to unpredictability in legal rulings; when constitutional norms are well understood, on the other hand, legislators and policymakers can align their actions with constitutional principles, reducing the need for judicial intervention.

1.2 The role of Constitutional Interpretation in Balancing Fundamental Rights

The fundamental principles of the Constitution, described in Articles 1-12 and in the first part relating to the “Rights and Duties of Citizens”, deeply shape the Italian constitutional

¹⁰ Carlo Mezzanotte, *Diritto costituzionale* (Padova: Cedam, 2012), 112.

system. This system would essentially cease to exist, transforming into a different one, if these principles were not observed and given specific protection. The values listed assume, precisely, a juridical significance of such essentiality that one could assert that the very organization of public powers is primarily functional to their implementation and realization.

The person, with its distinctive and inalienable attributes, constitutes the subject around which rights and duties are centred in our Constitution. In everyday customs, terms like “human rights”, “inviolable rights”, “constitutional rights” and “fundamental rights” are often used interchangeably, referring to rights that should be recognized for every individual by virtue of their humanity. This would appear to confirm, at the level of common sense and shared understanding, the intrinsic and complex relationship that has always, and indissolubly, connected natural law and positive law¹¹.

In this regard, it is worth mentioning the ruling no. 13 of 1994, which emphasizes that among the rights that constitute the inalienable patrimony of the human person, Article 2 of the Constitution recognizes and guarantees the right to personal identity. This is the right to be oneself, along with the corresponding set of ideological, religious, moral and social beliefs that differentiate, while simultaneously qualifying, the individual. Therefore, personal identity constitutes a good in itself, independent of - and indeed, precisely because of - the merits and flaws that evidently characterize every individual. Hence, each person is recognized as having the right to have their individuality preserved, regardless of any social or economic status. From the ruling, it follows that human dignity, as the foundational value of the constitutional pact, can be immediately translated into the so-called “personalist principle”¹², properly aimed at its preservation and protection.

The recognition of fundamental rights in the Constitution is, therefore, one of the defining elements of the rule of law¹³: these rights find their guarantees in the rigidity of the Italian Constitution and in the judicial review of laws entrusted to the Constitutional Court; it is also clearly evident that fundamental rights not only constitute the supreme principles of

¹¹ Aharon Barak, *Proportionality: Constitutional Rights and Their Limitations* (Cambridge: Cambridge University Press, 2012), 72.

¹² Robert Alexy, *A Theory of Constitutional Rights* (Oxford: Oxford University Press, 2002), 62.

¹³ *Ibidem*.

the constitutional system, but also define the very democratic structure of the State, which would be subverted if these rights were diminished, reduced or violated.

The Italian Constitution contains certain supreme principles that cannot be overturned or modified in their essential content, even by constitutional revision laws or other constitutional laws¹⁴. These principles, although not expressly mentioned among those exempted from the constitutional revision procedure, belong to the essence of the supreme values upon which the Italian Constitution is founded, and therefore hold a higher significance compared to other constitutional norms or laws¹⁵. The role of the Court, however, is not limited to delivering justice by annulling laws that violate fundamental rights; it extends further, giving substance and expansion to the fundamental principles outlined in the Constitution.

Considering that, some clarifications are necessary. As it is well known, Article 2 of the Constitution states that “the Republic recognizes and guarantees the inviolable rights of the individual, both as a person and within the social formations in which his personality is expressed”. The Court’s jurisprudence has never expressly clarified *ex professo* whether this provision constitutes a closed clause, in which case it would serve as a normative principle substantiated only by the subsequent enumeration of specific rights named in the Constitution, or whether it should be understood as an open clause, through which the identification of new rights would be allowed - those arising from historically emerging needs in the progress and evolution of social consciousness.

It remains clear, however, that the Court, when called upon in a constitutional legitimacy case to examine the scope of application of a fundamental freedom to a specific situation, cannot fail to consider whether the constitutional benchmark invoked or not other criteria, such as the principle of equality (Art. 3) or the principle of personal liberty (Art. 13), introducing a new aspect of a fundamental principle, potentially subject to independent consideration and judicial protection. Otherwise, this could also refer to the identification

¹⁴ Conference of European Constitutional Courts, XVIIth Congress. https://www.cortecostituzionale.it/documenti/relazioni_internazionali/dePretis_SupremePrinciples_EN_publica.pdf

¹⁵ Constitutional Court, Ruling No. 1146 of 1988, in which the Court reaffirmed the non-negotiability of certain supreme principles of the Constitution, stating that these principles cannot be modified even by constitutional revision laws, as they belong to the essence of the fundamental values upon which the constitutional order is based.

of new rights, such as the right to privacy, the right to a healthy environment, the right to protection from genetic manipulation etc., which characterize modern society, in constant evolution.

It is therefore important to bear in mind that inviolable rights, whether explicitly provided for or implicitly derived from the Constitution, represent a true manifestation of the above mentioned personalist principle, which calls for the consideration of the individual not as an isolated monad detached from the world, but rather as a person as *sub specie iuris personalistici*, precisely in those relational social contexts that alone give substance to their existence.

Having asserted how fundamental principles play a pivotal role within the Italian constitutional order, it is important to focus on their substance. Although they are not classified as norms of a hierarchically superior rank, as it has been asserted, they are nonetheless immune from any process of constitutional revision: the Constitutional Court has clarified that these principles cannot be altered in their essential content, as they embody the fundamental values upon which the Italian Constitution is founded. In this regard, it is crucial to distinguish between the norm itself and the value it expresses. It is precisely the intrinsic and paramount nature of the principle that renders it unamendable within the constitutional framework¹⁶. These core values are integrated into the legal system through constitutional principles, themselves extrapolated from foundational provisions. Through this interpretative and normative process, the principle - and consequently the fundamental right it upholds - attains constitutional untouchability.

First and foremost, there exists an ineffable relationship between values and normative statements: a value, even when identified by a norm or a constitutional principle, is never fully exhausted. Principles do help, in fact, in establishing relationships of precedence among values¹⁷, shaping the morphology of the system, yet they do not exhaust the full range of essential axiological contents. Secondly, since the legality of a norm is inferred from its belonging to the legal system, and given that the relationship between norms and values is the same across all deontic systems, it is enigmatic to observe how values could

¹⁶ Bernhard Schlink, "Proportionality in Constitutional Law: Why Everywhere but Here?," *Duke Journal of Comparative & International Law* 22 (2011): 291–292.

¹⁷ Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Cambridge, MA: MIT Press, 1996), 121–122.

be excluded from the legal horizon. This would lead to two consequences: theoretically, if values were not considered legal within the legal system, then also in a moral or social order values should likewise be regarded as external entities to their respective systems; practically, if the legal system were to rely on values external to itself, it would have to be concluded that such a system is entirely open to any axiological claim, even the most illiberal or inegalitarian - obviously, an illogical hypothesis.

Continuing in addressing the issue of fundamental principles, it is well known that their origin is rooted in jurisprudence. Initially, they were invoked to prevent canon law and European Community law from indiscriminately affecting any provision of the Constitution through the implementation of treaty laws¹⁸; subsequently and supervening, also constitutional law was assimilated under the principle of the inviolability of fundamental principles.

Constitutional laws, particularly those of revision, may be subject to judicial review for substantive defects, meaning that they can be challenged not only for violating Article 139¹⁹ of the Constitution, but also for contradicting the fundamental principles, which cannot be subverted or altered in their essential content in any way - not even by constitutional revision laws or other constitutional provisions²⁰. The Court has noted that it would be inconceivable for constitutional review guarantees not to function at the highest level if, formally, constitutional laws were to evade scrutiny. In this concern, Judgment no. 1146/1988 has been rightly praised in legal scholarship. It is of little significance to argue that, regarding the affirmation of the material reviewability of constitutional laws, the ruling merely constitutes an *obiter dictum* and is thus unsuitable to establish a precedent. This is because the Court itself reaffirmed this position in Judgment no. 203/1989²¹ and, in the same vein, declared the non-revisability of constitutional provisions concerning inviolable rights in Judgment no. 366/1991²².

¹⁸ Sergio Bartole, *Giudici e legislatori nella giurisprudenza costituzionale italiana* (Bologna: Il Mulino, 2017), 95.

¹⁹ Italian Constitution, Article 139, which states: "The Republic shall not permit changes to its democratic fundamental structure by means of a constitutional amendment."

²⁰ Marta Cartabia, *Principi inviolabili e integrazione europea* (Milano: Giuffrè, 1995), 95–96.

²¹ Constitutional Court, Judgment No. 203 of 1989, in which the Court addressed issues related to the protection of fundamental rights in the context of the constitutional framework.

²² Constitutional Court, Judgment No. 366 of 1991, in which the Court explored the limits of constitutional amendments in relation to democratic principles and fundamental rights.

Derogations may also be justified by the principle of reasonableness of laws. The principle of equality, its fundamental criterion, does not demand identical treatment for all individuals, but rather that the law treat equal situations equally and different situations differently, provided the distinction is both reasonable and justified. Accordingly, the principle of reasonableness prohibits:

Unjustifiably discriminatory laws: when a law treats differently individuals who should be treated equally; in such cases, the Court intervenes to extend the favourable treatment to those unjustly excluded.

Unjustifiably equalizing laws: when a law treats equally situations that are, in fact, different; in such cases, the Court intervenes to restore an appropriate distinction between the disparate situations.

Reasonableness emerges as an essential principle in constitutional interpretation, as it enables the mediation between potentially conflicting rights while ensuring a dynamic and context-sensitive balance²³. The Italian Constitutional Court has repeatedly emphasized the centrality of this criterion, defining it as a general standard for assessing the legitimacy of laws (see, for instance, the landmark judgment no. 204 of 1982²⁴ and, more recently, judgment no. 264 of 2012²⁵). In these rulings, the Court clarified that the principle of reasonableness entails a substantive review of the internal coherence of the legal system and the proportionality of legislative choices, in order to safeguard substantive equality and the protection of fundamental rights. Thus, reasonableness reveals itself not merely as a technical tool, but as a bridge between law and substantive justice - capable of adapting to societal changes without betraying the foundational values of the Constitution.

²³ Kai Möller, *The Global Model of Constitutional Rights* (Oxford: Oxford University Press, 2012), 47.

²⁴ Constitutional Court, Judgment No. 204 of 1982. In this decision, the Court examined the constitutional legitimacy of Article 7(7) of Law No. 300 of May 20, 1970 (the Workers' Statute), in relation to Articles 3 and 24 of the Constitution. The Court ruled the issue unfounded, holding that the suspension of the effectiveness of disciplinary sanctions, as provided by the contested provision, does not violate the right to defence nor the principle of equality.

²⁵ Constitutional Court, Judgment No. 264 of 2012. This ruling addressed the constitutional legitimacy of Article 1(777) of Law No. 296 of December 27, 2006, in relation to Article 117(1) of the Constitution and Article 6(1) of the European Convention on Human Rights. The Court rejected the claim, affirming that the provision - regarding pension calculations for workers who served abroad - pursued a legitimate public interest in ensuring a sustainable and balanced pension system.

Moreover, the reasonableness test operates within a broader framework of proportionality, often guiding the Court in evaluating whether legislative measures, which may encroach on fundamental rights, are justified and appropriately balanced. This dual process of assessing both the internal coherence of the legal system and the proportionality of legislative choices ensures that the protection of fundamental rights remains at the forefront of constitutional interpretation, while also considering the legitimate goals pursued by the legislature.

In essence, reasonableness serves not merely as a formal criterion but as a substantive mechanism that guarantees a living, responsive constitutional order. It bridges the gap between abstract legal principles and the lived realities of individuals, ensuring that the law serves not only as a set of rigid rules but as a flexible tool for the pursuit of justice in a complex and ever-changing society.

1.3 The Conflict between Absolute Moral Principles and Constitutional Compromises

A central tension in constitutional interpretation lies in the divergence between moral absolutism and the pragmatic nature of constitutional law. The conflict between absolute moral principles and constitutional compromises is a central theme in such matter, as it touches upon the very nature of law and its practical application within a complex legal system as the Italian one. Moral principles, particularly those derived from deontological theories, as Kantian ethics, are based on universal imperatives that do not admit exceptions or adjustments to specific circumstances²⁶. These principles are absolute, meaning they are non-negotiable, imposing moral obligations that cannot be subordinated to pragmatic or contextual considerations. However, in constitutional legal practice, the legal system is structured in such a way that continuous adjustments and balancing between fundamental rights and collective needs are required²⁷. Constitutional compromises, as expressions of the need to mediate between different values and

²⁶ Immanuel Kant, *Grundlegung zur Metaphysik der Sitten*, trad. it. Fondazione della metafisica dei costumi, a cura di G. Sanna (Roma-Bari: Laterza, 2019), 95.

²⁷ Arthur Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy* (Cambridge, MA: Harvard University Press, 2009), 74.

interests, can come into tension with the idea of absolute moral principles. While moral principles impose rigorous and universal duties, constitutional compromises often involve a more flexible approach, aiming to reconcile opposing needs in particular contexts. The difficulty arises precisely at the intersection between the aspiration to universalize justice and the need to negotiate solutions that are legally and empirically applicable to a variety of complex situations²⁸.

The significance of the distinction between rules and principles can be related to three main phenomena. The first pertains to the process of constitutionalization in legal systems, which has led to the positivization of a series of values and rights; the existence of constitutions with normative and axiological force superior to ordinary laws has resulted in the emergence of constitutional law as a law of principles. Secondly, this relevance can be linked to the progressive conceptualization of rights as reasons: in this sense, it can be said that the use of rights as reasons, i.e. as principles or values, is characteristic of constitutional law. The positivization of values and rights necessitates a specific normative form, that of principles; therefore, principles are the type of norm that demonstrates the greatest capacity to protect rights in comparison to general and abstract rules. Thirdly, the distinction between rules and principles is a crucial point in Dworkin's critique of Hartian positivism²⁹. This critique challenges the thesis of the separation between law and morality, emphasizing the presence of principles in law and their relationship to morality and demonstrating that judicial decisions are based on principles that refer to moral evaluations. The analysis of the distinction between rules and principles has developed in two directions: on one side, the strong distinction thesis, which asserts that there is a qualitative difference in structure between rules and principles; on the other side, the weak distinction thesis, which claims that the difference is only quantitative, and that rules and principles share the same characteristics.

The concept of constitutional compromise is based on the idea that, within a democratic system, fundamental principles must be interpreted and applied taking into account the specific historical, political and social circumstances³⁰. The constitution does not merely

²⁸ John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), 224.

²⁹ Ronald Dworkin, *Taking Rights Seriously* (Cambridge, MA: Harvard University Press, 1977), especially chap. 2. In this chapter, Dworkin challenges Hartian legal positivism by arguing that legal reasoning is not limited to rules but also involves moral principles, which judges must interpret and apply in hard cases.

³⁰ Jeremy Waldron, *Law and Disagreement* (Oxford: Oxford University Press, 1999), 102–103.

enunciate absolute rights, but rather establishes a framework where these rights must be balanced with other values and interests that the legal system deems relevant. In other words, constitutional compromises represent the necessary mediation to make principles that would otherwise be too rigid or unachievable in a dynamic context practically applicable. This concept fits within a constitutional theory that prioritizes the feasibility of coexistence between conflicting rights, such as the conflict between the right to privacy and public safety. A compromise does not imply the total renunciation of fundamental moral values, but rather the search for solutions that allow for the protection of these values within a legal framework that recognizes the plurality of interests at play³¹. The tension between absolute moral principles and legal compromise thus emerges as a process of negotiation that seeks to reconcile the ideal of justice with the practical needs of constitutional governance. In this context, law is not simply a matter of rigid norms and mechanical applications, but a field of complex decisions, where balancing moral and political needs is essential for the cohesion and stability of the system.

The conflict between rules is resolved through the criterion of validity, whereas the conflict between principles requires balancing, where the predominance of one principle does not invalidate the other, nor does it lead to the enunciation of an exception clause; the principle that “loses” remains valid and may become predominant in different cases. In constitutional states, two main subjects of balancing are identified: the legislator, who uses balancing when drafting laws to reconcile conflicting principles or rights, and the courts, who apply it both in the context of constitutional review of laws and when resolving legal cases. The legislator’s reconciliation of principles is considered a revisable balancing, meaning it can be subjected to review in the context of judicial review. This implies that judicial balancing can occur in two primary situations: the direct conflict between principles, i.e. when no rule of reconciliation has been established, and the indirect conflict, i.e. when a rule or method of reconciliation has already been formulated by the legislator. Judicial balancing generally involves the establishment of an axiological hierarchy: in cases where multiple principles may be applied in conflict, one principle is given precedence over another without declaring the “receding” norm invalid. This is an example of judgment of preference between two norms, which becomes necessary when

³¹ Pauline Kleingeld, *Kant and Cosmopolitanism: The Philosophical Ideal of World Citizenship* (Cambridge: Cambridge University Press, 2012), 45–46.

no formal or conventionally accepted coordination criterion is applicable. Judicial balancing differs, instead, from subsumption (applying the case to the general norm) in that it involves a value-based comparative judgment, i.e. evaluating the weight and importance of the competing principles³². These phases may involve discretionary choices and the presence of moral evaluations.

The outcome of judicial balancing can be viewed in different ways. Some authors argue that it is not a conciliation, nor an attempt to reconcile the conflicting principles, nor does it involve the partial application or sacrifice of both principles. Instead, it entails the sacrifice of one principle in favour of the other. Conversely, other scholars view balancing as a search for equilibrium between conflicting norms, with the “receding” principle becoming defeasible (subject to exceptions). The question of how balancing is conducted refers to the construction of the conflict rule. Two main answers can be identified: on one hand, there are views that regard this activity as an expression of a subjective value judgment; on the other hand, there are those who see it as a rational activity. The rational approach to balancing can be further developed in two distinct ways: the first (proportionalism) links balancing to proportionality and the possibility of quantifying the proportionality judgment; the second (specificationism) focuses on identifying paradigmatic cases of conflict resolution, which, upon coherence examination, can be applied to subsequent cases.

An additional aspect that accentuates the conflict between absolute moral principles and constitutional compromises is the “definitive” nature of legal rules. Rules, as norms that apply clearly and deterministically, impose precise and irreversible legal consequences. They operate according to a logic of subsumption: a concrete case is subsumed under an abstract provision already foreseen by the rule, with the automatic application of the legal sanction or effect. Their application is closed and definitive, leaving no room for interpretations that could lead to exceptions or adjustments to specific situations. This rigidity constitutes a significant contrast to principles, which are instead characterized by greater openness and flexibility, tied to their capacity to adapt to different contexts through balancing and weighing. However, in legal reality, the necessity to establish

³² Matthias Klatt, *Taking Rights Seriously and Beyond: A Critical Introduction to Ronald Dworkin’s Legal Philosophy* (Baden-Baden: Nomos, 2007), 63–64.

precise rules not only guarantees certainty and stability, but often translates into an obstacle when addressing situations that require a more nuanced application of the law, such as in the case of conflicts between absolute moral principles and the practical legal solutions offered by constitutional compromises³³. The definitive nature of rules, while conferring a sense of certainty, becomes a constraint when it comes to justifying exceptions or necessary adjustments to balance conflicting rights and interests. In this sense, the constant tension between the ideal of immutable law and the need for pragmatic conciliation represents one of the key challenges in resolving conflicts between absolute moral principles and constitutional compromises.

Absolute moral principles, as discussed in deontological ethics, demand that actions are universally applicable and that the same moral rules apply to all individuals, without exception. However, the nature of constitutional law necessitates the contextualization of these moral imperatives, as legal principles are often applied in dynamic, complex environments where specific societal, political and historical factors must be considered. The constitutional system is inherently flexible, requiring judges and lawmakers to account for varying conditions that may affect the practical application of fundamental rights. In this sense, the application of law is not merely a mechanical process of enforcing universal moral truths, but rather a negotiation of values within specific circumstances. For example, the right to freedom of expression may be universally recognized, but its scope and limitations can change depending on the context in which it is exercised - whether in the case of national security concerns, public order or other competing rights.

This tension between universality and contextualization highlights the inherent challenge of constitutional interpretation: while moral principles aim for the universal protection of rights and justice, legal compromises must accommodate the specificities of each case, adjusting to the socio-political realities that shape legal disputes. The balancing act between applying universal principles and considering contextual factors raises the question of how far constitutional compromises can deviate from absolute moral norms before they undermine the very values they are meant to protect. Thus, the tension between universality and contextualization represents a crucial aspect of the

³³ Aharon Barak, *Proportionality: Constitutional Rights and Their Limitations* (Cambridge: Cambridge University Press, 2012), 187.

constitutional process, revealing the difficulty in reconciling the ideal of universal moral justice with the pragmatic need for legal solutions that take into account the complexities of real-world situations.

In the Italian constitutional system, constitutional compromise is intrinsic to the very creation of the Constitution. The Italian Constitution is the result of a lengthy process of mediation among various social, political and cultural groups, necessitating a balance between fundamental values and rights within a specific historical and cultural context. Therefore, the Italian constitutional approach is not purely universal, as it requires the contextualization of norms based on social, economic and political needs. This process of compromise is also evident in the limitations placed on fundamental rights: while rights such as freedom of expression are universally recognized, their application within Italian law can be limited by concerns like national security or public order. The principle of reasonableness also comes into play here, offering a legal framework to evaluate and balance rights against societal needs³⁴.

A distinctive feature of the Italian constitutional system is the role of rules as definitive norms that establish clear and conclusive legal behaviours. Once established, these rules carry binding force, leaving no room for exceptions or subjective interpretations. Unlike principles, which are more general, open and subject to balancing and interpretation, constitutional rules are intended to provide a conclusive solution to specific legal cases. However, the relationship between principles and rules is not simple: while rules may be rigid and absolute, principles - especially regarding fundamental rights - must be balanced, weighted and applied flexibly to address the complexities of concrete cases. Within the Italian system, constitutional jurisprudence and judicial review play a crucial role in the delicate process of balancing principles and rules. The Constitutional Court is vital in interpreting norms and resolving conflicts between rights, principles and rules through continuous adaptation to specific circumstances, all while maintaining the definitive and binding nature of constitutional rules. Constitutional jurisprudence faces the complex task of applying universal principles, such as human dignity and equality, to concrete situations that do not always align perfectly with these ideals. The need to apply

³⁴ Gino Scaccia, *Bilanciamento e interpretazione nella giustizia costituzionale* (Torino: Giappichelli, 2000), 75.

constitutional principles in a contextualized manner does not mean that these principles are relativizable; rather, it means their application must be carefully considered in relation to the specific circumstances of each case, preserving their legal and moral function.

2 The Categorical Imperative as a Tool for Constitutional Balancing

2.1 Kantian Ethical Theory and its Core Principles

Deontology is an ethical theory that emphasizes the importance of rules, duties and moral principles, resulting to be one of the most influential ethical theories in philosophy³⁵. According to deontological ethics, some actions are considered morally obligatory, regardless of their consequences, being often referred to as a duty-based ethics because of its focus on following moral duties. Its most prominent form is Kantian Ethics, developed by the German philosopher Immanuel Kant: unlike consequentialism, which judges actions based on their outcomes, such kind of ethics focuses on the inherent rightness or wrongness of actions themselves, believing that morality is grounded in reason and that moral actions are those performed out of a sense of duty, rather than emotion or personal benefit³⁶.

The discovery of the will as a moral faculty, at the basis of which reason is found without fail, had been a prerogative since the Christian culture. With the idea of the Original Sin and the acquisition by men of the concept of good and evil, it was necessary to resort to a choice involving the will that could now decide, while knowing the Evil, to orient itself towards Good. Moral actions, to be such, must refer to general universal rules, valid for all men and at all times, to which maxims and imperatives are subject: imperatives are objective practical principles, rules that express the objective necessity of an action; it is not what one does that is moral, but the intention with which one does it³⁷.

Morality is nothing more than a constraint that men feel operating within them: it is a universal, absolute, unconditional law; yet, it always acts within a finite human being, and it is therefore influenced by his condition. This is why reason is always in conflict with the sensitive part of men that opposes it and causes this law to take the form of duty. The will wants to establish the law, but it wants the sensitive being, to which the will

³⁵ Larry Alexander and Michael Moore, "Deontological Ethics," *The Stanford Encyclopedia of Philosophy* (Winter 2022), ed. Edward N. Zalta, <https://plato.stanford.edu/archives/win2022/entries/ethics-deontological/>.

³⁶ Immanuel Kant, *Groundwork for the Metaphysics of Morals*, trans. Mary Gregor (Cambridge: Cambridge University Press, 1998).

³⁷ Immanuel Kant, *Critique of Practical Reason*, trans. Mary Gregor (Cambridge: Cambridge University Press, 1997).

belongs, to submit to it: the idea of law itself evokes that of submission. Such paradox is resolved through the idea of autonomy, as morality must be autonomous, rooted in a free decision of the subject³⁸. With the adoption of the criterion of autonomy, producing social effects of great importance, Kantian ethics excludes any action harmful to the rights of others, removing personal interests and selfish purposes³⁹. The moral law within men does not derive from anything prior, except from the fact that they are free beings, and as such they can freely choose. In this regard, Kant captured the two-dimensionality of human beings in the necessary tension between sensitivity and reason, always struggling between two forces that would like to prevail over each other and that men must balance⁴⁰. This is human's essence as free and moral beings: if we were only instinct, we would have no merit in behaving in a certain way; if we were moved only by reason, we would not be worthy of correct actions.

It is possible to define Kantian ethics to be prescriptive and not descriptive because it does not concern man as he is, but man as he should be; not as he behaves, but as he should behave. Although, this necessity does not deny freedom, it enhances it: in the tension between reason and sensitivity there is the awareness that one must overcome one's natural inclinations, but that one can also give in to them, just as the provisions imposed by reason can be violated. There is the assumption of a risk in the sense that Kant does not underestimate the limits of the human condition, opposing the moral fanaticism of those who believe that ethical perfection is possible: holiness, as the complete realization of virtue, is not of this world⁴¹. Morality does not concern the necessary rationality of a thinking being, but the possible rationality of a being who can decide to assume (or not) reason as a guide to conduct. There is the recognition of the smallness of the human being, aware of it: "We are indeed a very small thing in the universe, yet human dignity is constitutive of us and it is what does not make us prostrate or humiliate"⁴². The dignity of men is an incontrovertible fact: it is rooted in internal coherence, it is the

³⁸ Christine M. Korsgaard, *Creating the Kingdom of Ends* (Cambridge: Cambridge University Press, 1996).

³⁹ Thomas E. Hill Jr., *Respect, Pluralism, and Justice: Kantian Perspectives* (Oxford: Oxford University Press, 2000).

⁴⁰ Immanuel Kant, *Critique of Practical Reason*, 5:161.

⁴¹ Immanuel Kant, *The Metaphysics of Morals*, trans. Mary Gregor (Cambridge: Cambridge University Press, 1996), Part I, "The Doctrine of Right."

⁴² Pfordten, Dietmar von der. "On the Dignity of Man in Kant." *Philosophy* 84, no. 3 (2009): 371–91. <https://doi.org/10.1017/S0031819109000370>.

essential prerequisite of every virtuous behaviour, of each action, whose strength does not lie in conformity to external law or conventions, but solely to the norm whose foundation is in reason.

In Kant's theory of justice, two different meanings of the term are distinguished: negative freedom and positive freedom. The first is the possibility of acting independently of any external conditioning or constraint; positive freedom, on the other hand, is the "property of the will to make itself a law unto itself"⁴³, that is, to act as an autonomous subject. While positive freedom represents the object of Kantian ethics, negative freedom constitutes the centre of his theory of justice, a specific section of the ethics.⁴⁴

Negative freedom is further declined in "just" freedom: on the one hand, it is the freedom to act within the scope circumscribed by the laws of justice; on the other, it is considered a state of freedom without external laws which, instead, represents a form of anarchic freedom not subject to any constraint and typical of the pre-political state of nature⁴⁵. The ultimate purpose of the theory of justice is to distinguish legitimate freedom from illegitimate freedom and to determine which conditions make freedom itself legitimate.

Going into more detail, Kant identifies three characteristics of the idea of justice. First, it only makes sense if it applies to relationships between individuals and to the mutual influences that such relationships, directly or indirectly, can exert: if an action of mine has direct or indirect effects on you, then I can be subject to constraints by virtue of a rule of justice; but if an action has direct effects only on me and does not even indirectly influence the well-being of anyone else, such action cannot in any way be constrained by a law on the basis of considerations of justice. Second, justice concerns exclusively the "relation of one will to the will of another"⁴⁶, implying that each consensual act is a just act. Finally, justice concerns only the "form of the relationship between wills as considered free"⁴⁷. In short, Kant concludes, "right, therefore [or justice], is the set of

⁴³ Immanuel Kant, *Groundwork of the Metaphysics of Morals*, 34.

⁴⁴ Kant, *The Metaphysics of Morals*, 6:230.

⁴⁵ Thomas Hobbes, *Leviathan* (1651; repr., Oxford: Oxford University Press, 1998), chap. 13.

⁴⁶ Immanuel Kant, *Groundwork of the Metaphysics of Morals*, 30.

⁴⁷ *Ibidem*.

conditions under which the will of one can be in agreement with the will of another on the basis of a universal law of freedom”⁴⁸.

This freedom, as long as it is compatible with the freedom of every other individual, represents the only original right that belongs to a human being by virtue of his very humanity. “Just” freedom, nevertheless, is nothing other than that condition by virtue of which the external freedom of each individual can be exercised under constraints that make it compatible with the freedom of all the others, within the framework of a common system of laws.

In the absence of such system of laws - either because it has not yet been formed historically, or because it has collapsed under the blows of upheavals such as a revolution - there will only be a wild and unrestrained freedom and a state of war similar to the one asserted by Thomas Hobbes in the state of nature, before the birth of the Leviathan. For this reason, such state will always be considered unjust. Not much because of the injustice of the actions of individuals as because of the absence of a formal system of protection of their freedom. Even a community of altruistic saints would be considered unjust, according to Kant, by virtue of the absence of impersonal and non-arbitrary conflict resolution mechanisms⁴⁹.

The transition from wild freedom to just freedom occurs, therefore, with the establishment of a civil society capable of establishing an institutional structure and a set of laws that, in their turn, appear to be able to guarantee the coexistence of individual rights and freedoms and of making them express themselves to the maximum degree; according to Kant, this is the meaning of justice.

This universal law is nothing but a political version of the fundamental ethical principle of the whole Kantian philosophy, namely the Categorical Imperative. The universal law of justice is nothing other than a political translation of this ethical imperative, a translation in which the universal law is intended to place a constraint of mutual compatibility on the freedom of action of single individuals. Hence, Kant holds that the fundamental principle of our moral duties is a Categorical Imperative: “imperative” because it is a command addressed to agents who could follow it, but might even not;

⁴⁸ Kant, *The Metaphysics of Morals*, 61.

⁴⁹ Kant, *Groundwork for the Metaphysics of Morals*, Preface.

“categorical” in virtue of applying it unconditionally, or simply because of the possess of rational wills, without reference to any ends that human might or might not have. His seminal work, *Groundwork for the Metaphysics of Morals* (1785), introduces, in fact, the Categorical Imperative as the supreme principle of morality, being expressed through several interrelated formulations. Among these, three core principles stand out: universalizability, the intrinsic worth of persons, and the ideal of a Kingdom of Ends.

2.1.1 The Principle of Universalizability

In the *Groundwork for the Metaphysics of Morals*, Kant asserts: “Act only in accordance with that maxim through which you can, at the same time, will that it become a universal law”⁵⁰. This principle, stated as the first formulation of the Categorical Imperative, requires that any moral action has to be grounded in a maxim that can be universalized without contradiction. The moral agent must ask: “Could everyone act on this principle without leading to logical or practical incoherence?”. The basic outline for a decisional procedure in moral reasoning should be:

1. Formulate a maxim that enshrines your proposed plan of action;
2. Recast that maxim as a universal law of nature governing all rational agents, holding that everyone must, by natural law, act as you propose to do in that particular circumstances;
3. Consider whether your maxim is even conceivable in a world governed by this new law of nature;
4. If it is, ask yourself whether you would, or could, rationally will to act on your maxim in such world: if you could, then your action is morally permissible⁵¹.

Kant uses examples such as the duty not to lie or commit suicide to demonstrate how certain actions fail this test⁵². A maxim such as “It is acceptable to lie to secure a loan” cannot be universalized without undermining the very institution of truth-telling and promise-keeping, leading to what Kant calls a contradiction in conception. The

⁵⁰ Kant, *Groundwork of the Metaphysics of Morals*, 4:421.

⁵¹“Kant’s Moral Philosophy,” Stanford Encyclopedia of Philosophy.
<https://plato.stanford.edu/archives/sum2004/entries/kant-moral/>.

⁵² Kant, *Groundwork of the Metaphysics of Morals*, 4:422–423.

universalizability test is thus not a matter of empirical generalization, but of rational coherence - a requirement of moral law's necessity and *a priori* validity⁵³.

The moral imperative entails a decentralization of the subject, insofar as it counteracts the perspectival distortions that may arise from self-interest or from a particularistic standpoint insufficiently elevated to a truly supra-personal level. Practical judgment thus anchors itself in the principle of universalizability, not merely to pay formal homage to reason's normative force, but to heed the call for respect emanating from humanity itself - a humanity that speaks through and is constituted by the moral law⁵⁴.

The Kantian assumption is that the humanity of human beings reverberates in the universal horizon of the Categorical Imperative: if in one's own maxim one manages to accommodate the point of view of others, one will protect oneself from reification and reduction to a means of the other. In a survey of the main thematic nuclei of the Kantian political-juridical system, the intent is to highlight which is the emerging point of observation for each of them, focusing, where the prerequisites are found, on how the Kantian rational perspective implies, in some cases, a movement that invites one to change his own.

In this standpoint, the attention to excess as a constant reminder to be able to see otherwise also leads to the examination of the concept of advertising as a transcendental principle of justice and political legitimacy, capable of activating a virtuous channel that allows politics to conform to morality by referring to the rationality of the original contract⁵⁵. It is a path of convergence between politics and morality illuminated by the rational guarantee that Kant's point of view offers. In the anthropological time of daily exercise, the ground of moral-universal validation seems to be expressed in plural terms, with the overcoming of a logical, aesthetic, practical egoism, through a pluralism understood as a way of thinking by which one does not embrace the whole world in one's self, but behaving as a citizen of the world.

⁵³ Kant, *Groundwork of the Metaphysics of Morals*, 4:424.

⁵⁴ Kant, *Groundwork of the Metaphysics of Morals*, 4:428.

⁵⁵ Immanuel Kant, *Perpetual Peace: A Philosophical Sketch*, trans. H. B. Nisbet (Cambridge: Cambridge University Press, 1991), 8:381–384.

2.1.2 *Human Dignity as an End in Itself*

In the tradition of the *Metaphysics of Morals*, Kant reinforces the presuppositions of the Categorical Imperative by stating its second formulation: “Act in such a way that you consider humanity, whether in your own person or in the person of any other, always as an end, and never as a simple means”⁵⁶. This formulation underscores the inherent dignity of rational agents, derived from their capacity for moral autonomy and practical reasoning. In it, the subject of ends, that is, the rational being itself, must serve as a principle for all maxims of action, never simply as a means, but as the supreme limiting condition in the use of all means, always at the same time as an end.

This principle captures what Kant considers the intrinsic worth of rational beings - what he calls dignity or *würde*⁵⁷. Unlike items that possess an own price (i.e., relative worth based on utility or market value), rational agents have got an absolute value because of their capacity for moral autonomy. This autonomy - the ability to legislate moral law to oneself through reason - is what renders human beings ends in themselves.

For Kant, the capacity for rational deliberation and moral lawgiving is what grants humans a moral status. Human dignity is not contingent upon character, behaviour or social roles, but arises from this fundamental practical rationality shared by all people. Such principle further forbids treating any person merely as a means: personal dignity is violated when the person’s autonomy and consent are ignored or overridden, and since all rational beings share this capacity for autonomy, they are equal in moral worth. This radical egalitarianism underpins many modern political and legal frameworks, especially the idea that human rights are universal and inalienable. Although, The dignity formulation not only entails negative duties (e.g., not to lie or coerce) but also positive obligations: to promote others’ ends, support their autonomy, cultivate one’s own moral capacities etc. This expands the ethical horizon beyond a mere non-interference.

To treat someone as a mere means is to exploit or manipulate them in pursuit of one’s own ends, without regard for their own goals and agency. Conversely, to treat someone as an end in themselves is to respect their moral worth and autonomy. This principle lies

⁵⁶ Immanuel Kant, *Groundwork for the Metaphysics of Morals*, 4:429.

⁵⁷ Dietmar von der Pfordten, “On the Dignity of Man in Kant,” *Philosophy* 84, no. 3 (2009): 371–91, <https://doi.org/10.1017/S0031819109000370>.

at the heart of modern conceptions of fundamental rights, both specifically human or not, influencing constitutional law and international ethical frameworks. Importantly, Kant's conception of dignity is non-instrumental - it does not depend on social status, utility or sentiment, but rather on the very capacity for rational self-legislation. As such, the dignity principle forms the moral foundation of duties of respect, beneficence and non-exploitation.

Many constitutional systems (e.g., Germany's Basic Law, South Africa's Constitution) place dignity as a foundational value, reflecting Kant's influence especially in rejecting utilitarian trade-offs when basic fundamental rights are at stake⁵⁸.

2.1.3 *The Kingdom of Ends*

The third formulation of the Categorical Imperative offers a systemic vision of moral community: "Act according to maxims of a universally legislating member of a merely possible kingdom of ends"⁵⁹. Here, Kant imagines a moral ideal in which all rational beings are both authors and subjects of the moral law, united in a republic of moral agents governed by self-imposed, universal norms.

This formulation has gained favour among Kantians in recent years⁶⁰, as many see it as introducing more of a social dimension to Kantian morality. Kant states that, the above concept of every rational will as a will that must regard itself as enacting laws binding all rational wills, is closely connected to another concept, that of a systematic union of different rational beings under common laws, also named a Kingdom of Ends. It combines the others in that it requires that we conform our actions to the laws of an ideal moral legislature, that this legislature lays down universal laws, binding all rational wills including our own, and that those laws are of a merely possible kingdom, each of whose members equally possesses the status of legislator of universal laws, and hence must be treated always as an end in itself. The intuitive idea behind this formulation is that our fundamental moral obligation is to act only on principles which could earn acceptance by

⁵⁸ Christopher McCrudden, "Human Dignity and Judicial Interpretation of Human Rights," *European Journal of International Law* 19, no. 4 (2008): 655–724, <https://doi.org/10.1093/ejil/chn043>.

⁵⁹ Immanuel Kant, *Groundwork of the Metaphysics of Morals*, 4:439.

⁶⁰ John Rawls, *A Theory of Justice* (Cambridge, MA: Belknap Press of Harvard University Press, 1971), 221–27.

a community of fully rational agents, each of whom have an equal share in legislating these principles for their community.⁶¹

“The three formulas... are merely so many formulas of the very same law, and any one of them unites the other two in it.”⁶² This unity underscores the systematic nature of Kant’s ethics - not just isolated rules, but an interlocking structure built on reason, autonomy and moral community.

Kant’s Kingdom of Ends prefigures key concepts in constitutionalism, republican theory and human rights discourse:

Rule of Law: Like a constitution, the laws in the Kingdom of Ends are non-arbitrary, general and publicly accessible to reason.

Equal Moral Standing: All members are moral equals - no one can legislate for others without simultaneously legislating for themselves.

Foundations for Justice: The Kingdom reflects an ideal of moral justice, grounded not in consequences or utility, but in mutual respect, reciprocity and moral autonomy.

Such idea aligns with Rawls’s original position and Habermas’s discourse on ethics, both of which require laws or norms to be justifiable to all persons subject to them.⁶³

The Kingdom of Ends represents the culmination of Kant’s moral thought, combining the autonomy of the individual with the universality of moral law⁶⁴. It embodies an ideal society in which each person’s freedom is compatible with that of all the others - a vision that has deeply influenced liberal democratic theories and the concept of constitutionalism grounded in mutual respect and moral equality. In this framework, moral law is not imposed from without, but arises from the rational nature of agents themselves. The idea of a Kingdom of Ends thus provides not only a teleological

⁶¹ Christine M. Korsgaard, “Creating the Kingdom of Ends: Reciprocity and Responsibility in Personal Relations,” in *Creating the Kingdom of Ends* (Cambridge: Cambridge University Press, 1996), 106–32.

⁶² Immanuel Kant, *Groundwork of the Metaphysics of Morals*, 4:436.

⁶³ Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, trans. William Rehg (Cambridge, MA: MIT Press, 1996), 104–11.

⁶⁴ Thomas E. Hill Jr., “The Kingdom of Ends as an Ideal and a Constraint on Moral Legislation,” in *Kant’s Concept of Dignity*, ed. Oliver Sensen (Berlin: De Gruyter, 2020), 215–32.

orientation to Kant's ethics but also a communitarian vision that bridges individual morality with social justice.

This concept moves Kant's moral philosophy from the individual level of moral duty to a systemic vision of a moral community, being both a regulative ideal and a conceptual unification of the previous two formulations (universalizability and dignity).

2.2 Application of the Categorical Imperative to Constitutional Balance

Building upon the core principles outlined in §2.1 - namely, universalizability, human dignity and the Kingdom of Ends - this section aims to explore how the Categorical Imperative can inform the constitutional balancing process. Rather than offering a rigid normative framework, Kantian ethics provides a set of critical standards that, when implicitly integrated into judicial reasoning, safeguard the inviolability of individual rights within complex legal conflicts⁶⁵.

For over a century, the Italian Constitutional Court has asserted its authority to invalidate national legislation that contravenes constitutionally guaranteed rights⁶⁶. At the outset, it is essential to clarify that, within the scope of this analysis, the notion of "fundamental rights" is not confined to the traditional category of human rights in the international sense. Rather, it encompasses the broader set of constitutionally protected rights as recognized in the domestic legal order - including economic liberties, social rights, environmental interests, and other collective goods. This wider understanding reflects the evolving demands of contemporary constitutional jurisprudence and is particularly relevant when applying Kant's Categorical Imperative, which requires that every individual - and, by extension, every constitutionally protected interest - be treated as an end in itself, never merely as a means. Such a framework is indispensable when confronting the complex task of balancing competing rights in contexts marked by economic, environmental, or social conflict.

⁶⁵ Andrea Sangiovanni, "Human Rights in a Kantian Key," *Kantian Review* 24, no. 2 (2019): 249–261, <https://doi.org/10.1017/S1369415419000049>.

⁶⁶ Riccardo Guastini, "Fundamental Rights in the Italian Constitution: Three Interpretive Issues," *Analisi e Diritto* 21, no. 2 (2021): 1–15, <https://doi.org/10.4454/yvbtjsj25>.

However, none of the constitutional provisions concerning fundamental rights are entirely self-explanatory; their interpretation is almost always subject to legitimate disagreement. In modern jurisprudence, the Court has never fully embraced the position that it should defer entirely to the legislature's political discretion, except in cases of manifest unconstitutionality. Consequently, the practical exercise of constitutional review has consistently remained a site of interpretive tension.

Judicial decisions appear particularly problematic in the absence of clear evaluative standards. Even an imperfect standard may offer a degree of stability by limiting judicial discretion and enhancing the predictability of outcomes; yet, early jurisprudence failed to develop consistent and coherent criteria, giving rise to the perception that constitutional law lacked determinacy and, thus, institutional reliability. Increasingly, the Court turned to more deferential approaches, such as the general principle of reasonableness, according to which a law is valid insofar as it is not arbitrary and pursues legitimate objectives in a logically coherent and non-discriminatory manner.

At the same time, however, as the rigor of scrutiny diminished in areas such as economic regulation, the Court began to play a more active role in protecting fundamental freedoms and equality rights⁶⁷. Since a mere reasonableness test often proved insufficient, the Court progressively developed more structured forms of proportionality review, akin to the German *Verhältnismäßigkeit*⁶⁸, requiring a legislative measure to be suitable, necessary and proportionate in the strict sense. Over time, it became apparent that laws affecting sensitive areas of individual autonomy demanded a higher burden of justification. For a time, this evolution seemed to offer doctrinal clarity: the more intensely a law impacted core constitutional values, the more searching the Court's scrutiny would have been. However, uncertainty remained as to which rights merited such intensified review. To resolve this, the Court increasingly moved away from rigid dichotomies and embraced case-by-case balancing⁶⁹.

⁶⁷ Paolo A. Becchi, "Human Dignity in Italy," in Handbook of Human Dignity in Europe, ed. Paolo Becchi and Klaus Mathis (Cham: Springer, 2019), 453–468, https://www.academia.edu/111795500/Human_Dignity_in_Italy.

⁶⁸ Appropriatezza di un'azione o simile (in un contesto specifico, solitamente giuridicamente rilevante)

⁶⁹ Giuseppe Cataldi, "A Historic Decision of the Italian Constitutional Court on the Balance Between the Italian Legal Order's Fundamental Values and Customary International Law," The Italian Yearbook of International Law 24, no. 1 (2015): 37–54, <https://doi.org/10.1163/22116133-90000106>.

A similar phenomenon is observable in fields such as freedom of expression, sustainability, economic development and religion too. Categories of conduct once thought to fall outside constitutional protection - for instance, morally controversial forms of speech or ethically complex biomedical decisions - gradually received judicial recognition and safeguarding. Concurrently, the Court became increasingly willing to balance individual liberties against competing constitutional goods, such as public order, collective morality or the protection of vulnerable groups. This trajectory suggests that constitutional adjudication in Italy has steadily moved away from rigid rules and toward a more nuanced and flexible balancing model. While critics argue that such flexibility undermines legal certainty, it is difficult to deny that the Constitutional Court has, at least implicitly, adopted this direction.

The central question, then, becomes: How can one balance interests that are fundamentally incommensurable? How is it possible to weigh the social utility of a given normative policy against the infringement of an individual right? Kantian ethics offers a compelling normative framework for assessing such governmental actions⁷⁰. If a public policy treats an innocent individual merely as an instrument for achieving a collective end - for instance, treating the birth of an unwanted child as a form of punishment for fornication - then, according to Kant's second formulation of the Categorical Imperative ("treat every person as an end in themselves, never merely as a means"), such a policy is morally impermissible, regardless of its supposed utilitarian justifications.⁷¹

Although this Kantian insight is rarely stated explicitly in constitutional judgments, it often operates beneath the surface of the Court's reasoning. It reflects a deep-seated normative commitment in the Italian constitutional jurisprudence: the State may pursue legitimate collective aims, but it must never do so by instrumentalizing the individual or reducing human dignity to a mere variable in the public interest equation⁷². In this light, Kant's ethics not only complements, but also enriches the fundamental principles of Articles 2 and 3 of the Italian Constitution - affirming the inviolability of human rights

⁷⁰ Aharon Barak, *Proportionality: Constitutional Rights and Their Limitations* (Cambridge: Cambridge University Press, 2012), 3–4.

⁷¹ Robert Alexy, *A Theory of Constitutional Rights*, trans. Julian Rivers (Oxford: Oxford University Press, 2002), 66–70.

⁷² Caterina Drigo, "Principles in Constitutional Jurisprudence: The Principle of Human Dignity and the Epistemological Challenges for the Interpreter – Some Brief Reflections on the Recent Case Law of the Italian Constitutional Court," *Milletlerarası Münasebetler Türk Yıllığı* 46 (2016): 23–46.

and the equal dignity of all persons - as a boundary that positive law cannot cross, even in the name of collective utility.

In evaluating fundamental rights, Italian constitutional law assigns considerable weight to considerations of public interest and social utility. Even the most rigorous forms of judicial scrutiny - those entailing a stringent review of proportionality and necessity - acknowledge that a fundamental right may, in certain circumstances, be overridden to safeguard a compelling public interest. Individual rights may not always prevail over collective aims, but neither are they invariably subordinate to them. As a result, the act of balancing these competing values is both inescapable and notoriously difficult to ground in stable, objective principles.

Like other Enlightenment thinkers, Kant was a firm opponent of absolute government and maintained that the moral rights of individuals must take precedence over the arbitrary will of the State. At the same time, he was acutely aware that an unrestrained pursuit of personal freedom could devolve into disorder and anarchy. Hence, the need for a legal structure that limits liberty only to the extent required to ensure the equal freedom of all⁷³. A just law, in this vision, is one that promotes the maximum degree of liberty compatible with the liberty of others.

This insight led Kant to two fundamental conclusions:

- All individuals must be treated equally under the law.
- The law must be applied according to impersonal and universal rules, which do not take into account the contingent characteristics of individuals but rather their shared humanity.

It is therefore evident that the principle underlying Kant's categorical imperative is by no means foreign to the Italian constitutional jurisprudence. On the contrary, even if it is rarely invoked explicitly, it frequently appears in implicit form in the Court's reasoning⁷⁴ - particularly in those cases where a legislative measure is invalidated not because it lacks

⁷³ Alessandro Ferrara, "Moral Duties and Juridical Duties: The Ambiguity of Legal Ethics Considered Through the Prism of Kant's Metaphysics of Morals," *German Law Journal* 23, no. 1 (2022): 117–129.

⁷⁴ Daniela Tafani, "The Boundaries of Law: Kant and the Secularity of the State," in *The Boundaries of Law: Kant and the Secularity of the State*, ed. Riccardo Pozzo et al. (Pisa: Fabrizio Serra Editore, 2015), 915–930.

any legitimate aim, but because it seeks to achieve that aim by sacrificing a person, a group, or a core aspect of human dignity. In such instances, the Court's jurisprudence resonates with the Kantian imperative never to treat a person merely as a means to an end, but always as an end in themselves.

Despite doctrinal efforts to reduce constitutional adjudication to predictable formulas, in the vast majority of cases involving fundamental rights, a form of balancing inevitably comes into play. Whether the constitutional review is more or less intense - ranging from abstract reasonableness to strict proportionality - the process ultimately entails weighing individual rights against collective interests.

Whereas the societal costs of recognizing a particular right - such as implications for public safety, economic burden, or social order - are relatively quantifiable, the intrinsic value of an individual right is far more elusive and resistant to measurement. For this reason, some legal scholars advocate for a restrictive interpretative approach, limiting judicial recognition only to those rights expressly enumerated in the constitutional text, and avoiding any form of "creative" judicial reasoning.

However, this position faces at least two significant challenges: firstly, the intentionally open-textured language of the Italian Constitution, which employs concepts such as liberty, equality and due process that inevitably require interpretation; and secondly, the broader recognition - reflected in both doctrine and jurisprudence - that the catalogue of constitutionally relevant rights is not necessarily exhaustive, and that human dignity may ground further unwritten protections.

In light of these difficulties, Beschle proposes an alternative approach: rather than asking whether a right is fundamental in the abstract, one might ask whether a given public policy violates a deeper moral principle⁷⁵ - namely, Kant's Categorical Imperative in each of its three formulations. Though rarely articulated in explicit terms, such principle plays a subterranean but meaningful role in constitutional analysis. When the Constitutional Court invalidates a legislation that could appear socially rational, but sacrifices the

⁷⁵ Donald L. Beschle, "Kant's Categorical Imperative: An Unspoken Factor in Constitutional Rights Balancing," *Drexel Law Review* 13, no. 2 (2021): 265–300.

individual in the process, it often does so because it implicitly recognizes the ethical unacceptability of treating human beings merely as instruments of policy.

This is not to suggest that constitutional law ought to be formally subsumed under Kantian philosophy. Rather, it implies that constitutional judges - whether consciously or not - are influenced by a conception of human dignity that profoundly resonates with Kant's moral vision. In this sense, the ethics of respect operates not as an external moral supplement to constitutional law, but as one of its latent foundations⁷⁶.

2.3 Limits of Kantian Ethics in Legal Practice

Having illustrated how the Categorical Imperative can serve as a normative guide in the context of constitutional balancing (§2.2), it is now essential to critically assess the strengths and, more importantly, the structural limitations of Kantian ethics in the legal interpretative domain. While its principles offer a valuable ethical benchmark - particularly the inviolability of human dignity - the full integration of Kantian morality into constitutional adjudication raises both theoretical and practical challenges. If the Categorical Imperative is useful in providing a moral compass for constitutional adjudication, in fact, its application requires a critical adaptation to avoid the risk of ethical-formal absolutism that would be incompatible with the pluralistic nature of constitutional law.

It is crucial to emphasize that, in Kantian ethics, individuals are bound not only by the legal obligation to obey the laws of the state, but also by a moral obligation to do so - an obligation grounded in reason and expressed through the Categorical Imperative. According to Kant, the legitimacy of law is rooted in pure practical reason, and compliance with the legal order is, in principle, a rational duty of every citizen.

However, the view that the Categorical Imperative categorically prohibits all forms of disobedience to the law rests on two key assumptions: firstly, it presumes that the moral and legal orders are perfectly aligned - that is, the law never contradicts universal moral

⁷⁶ Caterina Drigo, "Principles in Constitutional Jurisprudence: The Principle of Human Dignity and the Epistemological Challenges for the Interpreter," *Milletlerarası Münasebetler Türk Yıllığı* 46 (2016): 23–46, https://doi.org/10.1501/Intrel_0000000300.

principles; secondly, it assumes that the sovereign authority (the head of state) embodies the law itself, and that disobedience to the sovereign equates to a rejection of the general will.

In practice, when these assumptions break down - for instance, when laws violate moral duties - the Categorical Imperative may, in fact, support conscientious disobedience, provided the agent is willing to accept the legal consequences of acting in accordance with higher moral principles. Kant's arguments against disobedience basically involve an appeal to pure practical considerations: human beings must obey the laws of the state, being "a requirement of pure reason"⁷⁷.

It is important to clarify that the normative function of Kant's ethics, within this framework, should not be understood as replacing the legal criteria traditionally used in constitutional adjudication, such as proportionality or reasonableness. Rather, the Categorical Imperative should be seen as an integrative ethical lens - a normative ceiling that prevents balancing operations from legitimizing the instrumentalization of individuals. In this sense, it acts not as a tool for direct legal resolution, but as a moral threshold against which the legitimacy of constitutional compromises must be tested.

This position relies on the assumption that there exists a unified and coherent set of moral principles - a system of harmonious, non-contradictory moral rules. If such internal consistency were absent, and moral duties could conflict with one another, then under the logic of the Categorical Imperative, any maxim derived from a contradictory rule would fail the test of universalizability and thus be deemed immoral. But what happens when a person is subject to conflicting legal and moral obligations? Here lies a fundamental tension: the system of positive law, by its nature, binds a plurality of free individuals into a coherent legal order. As Kant notes, "A civil constitution is a relationship among free men who are subject to coercive laws, while they retain their freedom within the general union with their fellows"⁷⁸.

This framework demands strict compliance with the law, as such obedience is what constitutes individuals as legal subjects. Yet, this very requirement can sow the seeds of

⁷⁷ Kant, *The Metaphysics of Morals*, 212.

⁷⁸ Kant, Immanuel. *Perpetual Peace: A Philosophical Sketch*. Translated by M. Campbell Smith. London: George Allen & Unwin, 1917.

conflict: if the positive legal order imposes norms that contradict moral duties grounded in reason, the harmony between law and morality collapses. Kant's concept of freedom, preserved only within the constraints of lawful civic union, thus opens the possibility for disharmony between moral autonomy and legal obligation.

Unlike other moral duties, the moral duty to obey the laws of the state is enforceable. Its coerciveness is indeed peculiar to this duty, but this does not mean that positive law is for Kant "prior in its claims"⁷⁹; neither does its empirical nature make positive law subordinate to morality⁸⁰. The coerciveness of the laws of the state indicates that they are prior to moral laws in empirical implementation and that non-observance leads to invalidate them.

The second key assumption underlying Kant's rejection of disobedience to the sovereign lies in his identification of the head of state with the law itself. In Kantian political philosophy, this conceptual equivalence underpins his arguments against any form of revolution or rebellion. For Kant, the sovereign - understood as a singular authority, whether a person or an institutional body - embodies the legal and constitutional order.

On this basis, Kant argues that there can be no lawful right to rebellion, because acknowledging such a right would imply the existence of a law that permits the dissolution of the very constitution from which all laws derive - a logical contradiction. To claim a right to overthrow the legal order would be to appeal to legality in order to destroy legality, undermining the very foundation of civil society.

This position rests on Kant's understanding of the constitution not as a contingent historical arrangement, but as an idea of reason - the rational embodiment of the General Will of the people. In this sense, the original contract does not grant citizens the right to judge or reject the constitution *in concreto*; rather, it presupposes the legitimacy of the constitutional order as the rational expression of collective autonomy. Thus, sovereignty is not external to the people but resides in their unified rational will - a will that, once institutionalized in a lawful constitution, cannot be disavowed without negating the very conditions of freedom and justice.

⁷⁹ Bess, M. L. "Kant's Theory of Justice." *Journal of Philosophy* 58, no. 5 (1961): 112-130.

⁸⁰ Reiss, H. "Kant's Concept of Law and Morality." In *Kant's Political Philosophy*, edited by H. Reiss, 45-60. Berlin: Walter de Gruyter, 1983.

Kantian legal philosophy maintains a strict heteronomy between moral law and positive law. When these two normative spheres come into conflict, Kant does not impose an absolute moral obligation to obey the law of the state. Instead, he allows for the possibility of morally justified disobedience, provided that the individual acts out of duty to the moral law and is prepared to accept the legal consequences of that disobedience.

This inherent tension stems from a fundamental dualism within Kantian thought: while the legal order demands conformity and coercive compliance, moral autonomy obliges the individual to act according to the dictates of reason. The potential clash between these two normative systems gives rise to a latent or immanent possibility of disobedience within any legal framework that departs from moral legitimacy.

This scenario is reminiscent of the antinomies explored in the Critique of Pure Reason, where two equally rational positions can come into conflict due to the limitations of practical reason⁸¹. Similarly, both the legal duty and the moral duty may assert legitimate claims upon the individual. In such cases, it is ultimately up to the rational agent - guided by the Categorical Imperative - to determine which obligation must prevail. The moral law retains its supremacy, but its application may require sacrifice, responsibility and a conscious willingness to bear the legal repercussions of acting ethically in defiance of unjust legislation.

⁸¹ Immanuel Kant, Critique of Pure Reason, A426/B454.

3 The Judicial Role: from Legal Interpretation to Moral Responsibility

“Some standards can be prescribed by law, but the spirit of, and the quality of the service rendered by a profession depends far more on its observance of ethical standards. These are far more rigorous than legal standards.... They are learnt not by precept but by the example and influence of respected peers. Judicial standards are acquired, so to speak, by professional osmosis. They are enforced immediately by conscience.”⁸²

3.1 The Judge as a Guardian of Moral Law

According to the principle of separation of powers, the Judiciary was regarded as one of the three powers alongside Legislative and Executive powers. Judiciary is the institution to which the State entrusts the difficult and delicate, but honourable function of adjudicating and peacefully resolving disputes which, from time to time, arise in the society. To achieve democratic governance under the rule of law and constitutionalism, in fact, an ethical, independent and impartial judiciary and public prosecution is essential⁸³: without it, democracy is at risk and fundamental rights endanger being infringed by an unchecked executive or legislative power. On the contrary, as defenders of the Constitution and stewards of fundamental rights and freedoms, the judiciary and public prosecution play an essential role of accountability, which calls for them to be proactive, active and responsive to the public's needs.

The professional ethics of judges and public prosecutors is a significant and ongoing issue in every judicial system. This is not because of specific crises that have occurred in a given country or state, or because the ethics of those in charge of the respective institutions have deteriorated; rather, it is because the professional ethics of these institutions is a crucial component of the steadiness of judges and public prosecutors,

⁸² Christopher Enright, *Judicial Ethics in Australia*, 2nd ed. (Sydney: LBC Information Services, 1997).

⁸³ Conference of European Constitutional Courts. XVIIth Congress. https://www.cortecostituzionale.it/documenti/relazioni_internazionali/dePretis_SupremePrinciples_EN_pubblica.pdf

which unquestionably needs to be continuously improved and raised to a higher level⁸⁴. The nature of the job of a judge or public prosecutor actually necessitates to fulfil such criterion, as they must adapt to the changing times and the evolving processes of the concrete society, regardless of how adaptable they may be, considering their need for stability.

The ethics of judges and public prosecutors may be conceptualized as the *corpus* of principles and normative guidelines that govern their professional and personal conduct, both in the execution of judicial functions and in their interactions, public or private, with other institutions and individuals; in this context, ethical standards serve as a vital interface between the human dimension of the public prosecutor and their institutional role as impartial arbiters of justice. As a profession pervaded with a profound sense of honour and public responsibility, the judiciary requires the establishment of a codified ethical framework: it results to be indispensable for ensuring adherence to elevated standards in the administration of justice, aiming to safeguard and uphold the foundational values of independence, impartiality, integrity, competence and diligence, while simultaneously fostering public respect, institutional trust and confidence in the judicial system. These ethical principles are intended to function as evaluative benchmarks against which judicial conduct, performance and decision-making can be measured.

Crucially, these norms must originate from within the judiciary itself, as an expression of its institutional autonomy and self-regulatory capacity, rather than being externally imposed by the Executive or the Legislature. Furthermore, transparency and public dissemination of such ethical codes are essential not only for the sake of accountability, but also to ensure their social legitimacy and normative authority.

In the contemporary legal and political context, strict adherence to the highest standards of judicial ethics has become even more imperative. Indeed, even a judge or public prosecutor endowed with a strong personal moral compass may, through lack of awareness of formal ethical requirements, inadvertently engage in a conduct that

⁸⁴ European Network of Councils for the Judiciary (ENCJ). Judicial Ethics Report 2009–2010. <https://www.encj.eu/images/stories/pdf/ethics/judicialethics.pdf>

jeopardizes their reputation and, by extension, that of the judiciary as a whole. A judge or prosecutor, in fact, must not only competently manage their caseload and remain abreast of evolving laws and procedural developments, but also discharge various administrative responsibilities. Nevertheless, the ignorance or neglect of ethical obligations - regardless of time constraints or institutional pressures - can never serve as a valid justification for misconduct or impropriety. Accordingly, the public prosecutor finds himself under a continuous obligation to remain informed not only about legal developments, but also of the evolving standards of judicial ethics. This ethical consciousness must be understood as a process of lifelong learning: one that requires periodic reflection and reaffirmation of the ideals and duties intrinsic to judicial office. Such engagement not only reinforces a culture of ethical excellence, but also serves as a preventive mechanism against lapses in conduct.

Just as justice must not only be done, but also manifestly be seen to be done, ethical principles, following the same *ratio*, must not only be internally upheld, but also and foremost be perceived as visibly guiding judicial behaviour, avoiding both actual impropriety and its mere appearance, and maintaining impartiality and diligence. Any instance of carelessness or indiscretion has the potential to erode public confidence in judicial integrity and, consequently, to put at risk the very independence of the judiciary. While it goes without saying that judges and prosecutors must observe the highest standards of personal morality, their individual sense of righteousness, however commendable, must not supersede or undermine the collective and objective ethical codes that govern the profession: the authority and legitimacy of the judiciary rest not on personal virtue alone, but on a shared, transparent, and consistently applied ethical framework.

In that sense, Kant's moral philosophy has served as a foundational cornerstone for ethical thought over the past two centuries, profoundly shaping the trajectory of idealist philosophy in its various manifestations. At the heart of Kantian ethics lies the imperative that human action must possess a form of universal validity which must be guided by principles that hold intrinsic normative weight and could, on the whole, be acknowledged by all rational beings. This demand for universality is not merely abstract, but concretely embodied in the concept of duty, which for Kant functions as the formal expression of

moral law. Within this framework, ethical conduct is not contingent upon subjective inclinations or external consequences, but rather arises from the rational agent's autonomous recognition of obligations that transcend individual perspective.

In the context of judicial and prosecutorial ethics, this Kantian ideal assumes particular salience: the public prosecutor, in discharging public functions, must act according to principles that could be elevated to universal norms without contradiction. The legitimacy of judicial action thus rests not merely on procedural compliance, but on the alignment of one's conduct with a duty that aspires to universal reasonableness, impartiality and moral coherence⁸⁵. The judge or prosecutor, as a moral agent entrusted with institutional authority, must therefore internalize this *ethos* of universality as a guiding standard for ethical deliberation and professional behaviour.

3.2 Moral Autonomy and the Kantian Analogy

The essential distinction between law and morality lies in their normative modalities: law operates through prescriptive authority and imposes obligations; its vocabulary is that of command, of the imperative “must”. Morality, on the other hand, seeks to persuade, invoking the aspirational force of the “ought”. This conceptual bifurcation governs the relationship between the formal, legal obligations that concern judges and public prosecutors, and the ethical norms enshrined in their professional codes. When one considers, in fact, fundamental principles, such as independence and impartiality, it becomes evident that these values simultaneously inhabit both legal and moral domains. Such principles are juridical mandates insofar as they are codified in law, yet they also constitute deep moral imperatives, essential to the integrity of the judiciary.

This dual valence, both moral and legal, is not incidental at all, as it constitutes the necessary condition for the realization of justice. Indeed, the fusion of legal normativity and moral conscience must animate every judicial and prosecutorial decision, since the convergence of legality and morality in judicial reasoning reflects not a conflation, but an indispensable harmonization. In the context of judicial ethics and institutional

⁸⁵ Mauro Cappelletti, *Giudici Legislatori?* (Bologna: Il Mulino, 1984).

responsibility, Kant's notion of moral autonomy - as explored in his *Groundwork* and in the 1784 Feyerabend Lectures on Natural Law - offers a profound framework for understanding the ethical demands placed upon judges and public prosecutors⁸⁶.

At the heart of this reflection lies the concept of autonomy not merely as personal independence, but as self-legislation guided by universalizable maxims. Kant conceives the concept of autonomy as the will's property of being a law unto itself as a rational and normative ideal, rooted in the reason's capacity to legislate moral law⁸⁷, far from a merely voluntaristic sense. This philosophical model acquires juridical significance when transposed into the domain of judicial and prosecutorial conduct: just as Kant's political theory demands that legitimate laws require to be consented by all citizens, as if arising from a universal agreement, the professional ethics of those who serve justice must be grounded in principles that could likewise be affirmed by all rational agents. This means their conduct, decisions and public presence must reflect norms that are not only formally lawful, but also morally defensible under the test of universality.

The analogy between political and moral lawmaking elucidates the idea that the ethical authority of judges and prosecutors does not originate in institutional mandates alone; rather, it stems from their internalization of moral law as a constitutional principle of reason⁸⁸. As such, these figures are not merely enforcers of the law but, analogically, also legislators in the moral realm, bound by the imperative to "act as if the maxims of their actions were to become universal laws". This requires a profound and ongoing commitment to ethical self-scrutiny, where the judge or prosecutor embodies an internal standard of conduct which aspires to universal coherence and impartiality, not being exclusively circumscribed by external codes.

Accordingly, the institutional legitimacy of the judiciary depends on the fusion of legality and morality: a convergence that mirrors Kant's conception of the fundamental law respect to the concept of autonomy. This dual normativity is manifested in principles like independence, impartiality and integrity, which are both legal requirements and moral

⁸⁶ Immanuel Kant, *Lectures on Ethics*, ed. Peter Heath and J. B. Schneewind, trans. Peter Heath (Cambridge: Cambridge University Press, 1997), 27:132–135.

⁸⁷ Immanuel Kant, *The Metaphysics of Morals*.

⁸⁸ Donald L. Beschle, "Kant's Categorical Imperative: An Unspoken Factor in Constitutional Rights Balancing," *Hastings Constitutional Law Quarterly* 25, no. 1 (1997): 41–70.

imperatives⁸⁹. The role of ethical codes is not simply prescriptive; rather, they serve as a visible and communicable expression of the judiciary's autonomous commitment to justice, thereby reinforcing public trust: in this light, the judge or public prosecutor emerges as a rational and moral agent whose authority is justified only as long as it reflects an alignment with a universally legislated order of justice.

The public nature of ethical standards and their self-imposed character underscore, in light of the above considerations, the Kantian insight that justice must be both done and seen to be done not only procedurally, yet also at an ethical level. In this way, autonomy, understood in its highest philosophical and legal sense, becomes the very condition for ethical judicial governance under the rule of law.

3.2.1 Limits of Instrumental Reasoning

In contemporary constitutional law, instrumental rationality occupies an ambiguous position: on the one hand, it is an indispensable element of the legal argument, based on criteria of efficiency, predictability and optimization of results; on the other, it risks reducing the entire system to a technical instrument of power management, sacrificing the axiological dimension and the centrality of the person⁹⁰.

The present issue becomes particularly delicate in the process of balancing among fundamental rights, where the calculation of consequences can easily prevail over the moral imperative of non-instrumentalization of the individual. The instrumental reasoning is, in fact, based on the logic of the means-end, assuming an objective (e.g. public security, economic stability, social order) and evaluating the norm or intervention in terms of its effectiveness with respect to such objective.

This approach, typical of regulatory economics and administrative law, has also found increasing room in the constitutional argument, especially in balancing techniques based on proportionality in the strict sense. However, when applied in an exclusive or hegemonic manner, this instrumental approach puts in light three main theoretical and practical limitations:

⁸⁹ Carlo Guarnieri and Patrizia Pederzoli, *La Giustizia in Italia* (Bologna: Il Mulino, 2007).

⁹⁰ Marta Cartabia, "The Age of Proportionality," *Italian Journal of Public Law* 3, no. 1 (2011): 13–27.

Anthropological Reductionism, for which the individual risks to be considered no longer as a subject with inviolable rights, but as a variable among others in the rationality of the systems; such approach compromises the personalist dimension of the Italian Constitution (art. 2 and 3), which assigns centrality to the dignity and uniqueness of the human being⁹¹.

Axiological Fragility, for which effectiveness results to be separated from justice: a rule is assessed as legitimate for its functionality in relation to contingent purposes, and not for its consistency with constitutional values; the result is a fluid legitimization of law, dependent on social, economic and political factors rather than stable and universal normative principles.

Systematic Contradiction, for which constitutional law, if reduced to a decision-making technique, loses its ordering and founding function of the system; in such context, the risk is that each principle can be balanced until annulment, with a jurisprudence that operates without axiological limits and that bends to the logic of efficiency, also when this involves the marginalization of minorities or the structural compression of fundamental rights.

In light of these limitations arises the urgent need to recover an integrated normative rationality, capable of containing within itself the efficiency of the means-end approach, but subordinating it to criteria of moral coherence and legal universality. The answer is not, in fact, the abandonment of balance or proportionality, but their ethical re-education: any choice of interpretation or regulation must be certainly justifiable in terms of outcomes, but also and foremost based on principles of universal justice and non-instrumentalization⁹².

One practical way in which this can be done is by internalising a “universal law test” as a part of judicial deliberation. The judge may ask: “Could I will the legal rule I am applying or creating in this case to be adopted universally, in all analogous situations, without contradiction?”, likely to become a normative filter that helps to ensure consistency, impartiality and respect for all. Moreover, such a test may help judges to identify hidden biases or inconsistencies in legislative or jurisprudential rules: if a norm

⁹¹ Gustavo Zagrebelsky, *Il diritto mite: legge, diritti, giustizia* (Torino: Einaudi, 1992), 95–98.

⁹² Luigi Ferrajoli, *Principia Iuris. Teoria del diritto e della democrazia*, vol. I (Roma-Bari: Laterza, 2007), 233–237.

applied to a specific group could not be reasonably and justly extended to all relevantly similar cases, then it must fail the test of universalizability. In this way, Kantian ethics could also offer a practical evaluative criterion, and not only an abstract ideal, as a tool for refining the quality of judicial justification, aligning it with the deeper constitutional values of equality and dignity.

Thus, the move toward a morally engaged judiciary begins with a shift in judicial perspective: one that intends the law not only as a system of commands, but as an expression of reason shared among all autonomous agents.

3.2.2 Toward a Morally Engaged Judiciary

If the instrumental rationality shows its limits in reducing the right to calculation, it is in the role of the judge that lurks the possibility of a critical overcoming: that of an ethically committed jurisprudence, based on a practical rationality which is not only efficient, but also and foremost moral and universalizable⁹³.

The figure of the constitutional judge cannot be reduced to a mere neutral technician or arbitrator: he is, by definition, an interpreter and guarantor of the supreme values of the system. In this perspective, the morally committed judge is one who recognizes the dignity of the subject as an insurmountable limit to regulatory action⁹⁴, who checks the universal coherence of its decisions, not accepting solutions that cannot be rationally extended to all, and who assumes moral responsibility for its own choices, even in the presence of formal constraints or social-political pressures.

This approach, even if based on the Kantian's Categorical Imperative principle, fits coherently into the structure of the Italian Constitution, which conceives legality as an expression of human dignity and jurisdiction as a space for the recognition of inviolable rights. The judge, in this context, does not act in abstract, but in the concrete exercise of a power that affects the interpretative and balancing process in all of its declinations.

It is only through an ethics of argumentative responsibility that the Constitutional Court can guarantee a coherent right, predictable but also human, and capable of integrating the

⁹³ Ronald Dworkin, *Law's Empire* (Cambridge, MA: Harvard University Press, 1986), 244–258.

⁹⁴ Robert Alexy, *A Theory of Constitutional Rights*, trans. Julian Rivers (Oxford: Oxford University Press, 2002), 47–53.

limits of instrumental reasoning with the normative force of constitutional values⁹⁵. Far from being a subjectivist approach, such paradigm strengthens the legitimacy of the judicial function: not because the judge “moralizes” the law, but because he recognizes the limits of efficiency as the sole yardstick for decision-making and restores the centrality of the person as the end of the law. In this sense, a jurisprudence that is based on dignity, equality and universalisation of normative solutions does not result to be less rigorous; on the contrary, it is perhaps even more constrained because of its being called to account not only for formal rationality, but also for the moral justification of their decisions. The constitutional judge, therefore, does not abandon technique, yet subordinates it to a higher duty: that of ensuring that the law, in its making, does not lose sight of moral duties.

This conception of a morally engaged judiciary finds confirmation not only in philosophical reflection, but also in concrete jurisprudence. A striking example can be found in Italian Constitutional Court judgment no. 141 of 2019, addressing the sensitive issue of assisted suicide⁹⁶. In that case, the Court did not limit itself to mechanically applying Article 580 of the Penal Code, which states that anyone who incites or assists another person to commit suicide is punished⁹⁷; rather, it took into account the principle of human dignity and the right to self-determination, acknowledging the need to balance legal norms with evolving ethical imperatives. The Court affirmed that, in exceptional circumstances, the criminalisation of assistance to suicide could infringe upon constitutional rights, thereby implicitly embracing a morally committed judicial posture.

This judgment illustrates how judges, even within the constraints of positive law, can, and sometimes must, engage in morally oriented interpretation; it exemplifies the possibility of applying constitutional norms in a way that respects both the rule of law and the inviolable value of the human person, echoing the Kantian demand that no individual must be treated merely as a means, but always also as an end.

⁹⁵ Gustavo Zagrebelsky, *La legge e la sua giustizia* (Torino: Einaudi, 2008), 101–104.

⁹⁶ Corte Costituzionale, sentenza n. 141 del 2019, in *Giurisprudenza Costituzionale*, 2019.

⁹⁷ Codice Penale italiano, Art. 580, *Istigazione o aiuto al suicidio*, approvato con R.D. 19 ottobre 1930, n. 1398, G.U. n. 251 del 26 ottobre 1930.

From this point of view, the idea of a case law ethically committed does not translate into judicial subjectivism or a renunciation of normativity, but in the search for rational and universally justifiable criteria through which to guide the constitutional interpretation. The judge should not be faced with a choice between technique and morality, yet integrate the former into the latter, anchoring the interpretative discretion to parameters capable of ensuring consistency and not arbitrariness.

It is precisely in this space of intersection between ethical responsibility and legal rationality that is placed the Kantian principle of universalisation, understood as a proper operational criterion for measuring the legitimacy of legal decisions and their compatibility with the substantive equality and coherence of the constitutional order. The following section will therefore explore how universalizability can act as an internal link to law, capable of orienting jurisprudential activity in a normative and structured way.

3.3 Universalizability in Judicial Application: between Normativity and Coherence

Within the constitutional framework, Kant's principle of universalizability may assume an autonomous juridical function, extending far beyond its original ethical formulation. It emerges as a criterion of normative rationality, instrumental in ensuring the internal coherence of the legal system and in guiding judicial reasoning, particularly in cases where constitutional principles must be balanced through scrutiny of the logical consistency and non-arbitrariness of normative solutions.

Legally speaking, universalizability may be defined as the capacity of a norm - or a jurisprudential orientation - to withstand generalization: it must be capable of consistent application to all legal subjects in analogous conditions, without generating systemic contradictions or unreasonable discrimination. In this regard, universalizability serves both as a formal and substantive criterion of legitimacy: formally, insofar as it prevents violations of Article 3 of the Constitution, by precluding unjustifiable differential treatment; substantively, as long as it compels the judge to maintain axiological coherence with the supreme values of the legal order, including dignity, equality and liberty.

Unlike the principle of proportionality, which operates as a balancing mechanism among competing interests and weights, universalizability introduces a symmetrical and non-utilitarian logic: a norm or judicial decision is acceptable only if the adopted criterion may be upheld, without exception, as a general rule within a rational legal context. This conceptualization transforms the role of the constitutional judge, who is no longer limited to assessing the technical legality of norms, but is also called upon to exercise a form of public and rational justification of normative decisions, as if every judgment were intended to hold normative force for all.

Legal consistency thus emerges not only as an internal requirement of positive law, but as a moral imperative of constitutional law: an imperative grounded in the capacity to universalize each interpretative or normative choice. From this perspective, the Kantian principle operates as a preventive normative filter: it excludes *ab initio* any solutions which, if generalized, would lead to contradictions or morally unacceptable outcomes. In this lies its structural import for constitutional law: universalizability is not a mere ethical accessory, but a guarantee of non-arbitrariness and systemic coherence.

The application of the principle of universalizability within the Italian constitutional jurisprudence is exemplified by several landmark decisions which, though not explicitly invoking it, reflect its underlying logical and moral premises.

This normative demand is already embedded, at least implicitly, in some leading constitutional rulings. For instance, in decision no. 264 of 2012, the Italian Constitutional Court invalidated a legislation that introduced arbitrary distinctions between different categories of public employees⁹⁸. Although the ruling did not explicitly invoke Kantian universalizability, its underlying rationale was precisely that of rejecting normative inconsistency and upholding equal treatment for persons in analogous situations. In effect, the Court demanded that principle of justice to be applicable to all in a logically coherent and universally valid manner. Such case law demonstrates that constitutional adjudication, even when framed in legalistic terms, can reflect moral standards consistent with the Categorical Imperative. Judicial decisions, in this sense, may become vehicles

⁹⁸ Corte Costituzionale, sentenza n. 264 del 2012, in *Giurisprudenza Costituzionale*, 2012.

through which the ideal of universal legislation, central to Kantian ethics, finds practical and institutional expression.

In the Judgement No. 204/1982 regarding reasonableness and implicit discrimination⁹⁹, the Constitutional Court declared the unconstitutionality of a provision that afforded more favourable pension treatment to certain workers while excluding others in substantially identical conditions, without any objective justification. The Court grounded its reasoning in the principle of reasonableness, used as a criterion to assess the compatibility of differentiated normative treatments with Article 3 of the Constitution. Nonetheless, a Kantian rationale may be discerned beneath the surface: a norm that generates arbitrary disparities cannot be universalized, as its differentiation criterion does not conform to a general and universally applicable logic. In such instances, the legislature betrays the principle of legal coherence by introducing normative favouritism incompatible with substantive equality. Thus, in such context, the Court's intervention does not merely serve to correct a technical anomaly, but to re-establish normative symmetry grounded in the possibility of generalizable legal treatment.

An even more profound application of the universalizability principle is found in Judgment No. 1146/1988, wherein the Court, albeit in *obiter dictum*, asserted that constitutional amendments themselves are subject to substantive limits, particularly respect for the supreme principles of the legal order, such as human dignity, republicanism and equality¹⁰⁰. The logical implication is clear: not everything that is formally constitutional is legitimate, even more if it violates principles that cannot be universally denied without rendering the entire legal order incoherent. In Kantian terms, the Court affirms that one cannot aim for a constitution that permits its own negation: such a stance would entail a normative contradiction. Constitutional legitimacy, therefore, cannot be reduced to formal compliance alone, but must exhibit universal axiological coherence with the foundational values of democratic coexistence.

In both cases, the Constitutional Court acts as a guardian of normative universalizability: correcting unjustified inequalities (204/1982) and imposing rational and moral constraints

⁹⁹ Corte Costituzionale, sentenza n. 204 del 1982, in *Giurisprudenza Costituzionale*, 1982.

¹⁰⁰ Corte Costituzionale, sentenza n. 1146 del 1988, in *Giurisprudenza Costituzionale*, 1988.

on the very power of constitutional revision (1146/1988), reaffirming how the legal order must remain logically compatible with the idea of law as binding for everyone, compatible with the ethics standards and moral duties professed by the Categorical Imperative principle.

4 Case Study: The Ilva Case and the Consistency of Constitutional Jurisprudence

4.1 Analytical Premises and Case Context

This chapter aims to explore the potential concrete applications of Kant's Categorical Imperative within the domain of constitutional interpretation, with a specific focus on the balancing of fundamental rights in the context of Italian constitutional jurisprudence.

Building upon the theoretical and conceptual framework outlined in the previous chapters - where the connection between Kantian moral philosophy and the hermeneutic function of constitutional interpretation was established - this section seeks to transpose those reflections into legal praxis.

To this end, particular attention will be devoted to the case of the ILVA steel plant in Taranto, which exemplifies a paradigmatic conflict between fundamental rights: on the one hand, the right to health and to a healthy environment; on the other, the right to work and economic continuity.

This conflict, far from being merely technical or circumstantial, brings to light a broader and more theoretical issue: how can the constitutional interpreter navigate between equally fundamental rights in the absence of a predetermined hierarchy? The ILVA case illustrates the inherent difficulty of avoiding an implicit valuation of the rights involved, a process often entrusted to extra-constitutional criteria or political choices disguised as technical necessities. This highlights the urgent need to reflect on which normative and theoretical tools may be legitimately employed to perform a balancing operation that aspires to impartiality and rational justification. The following overview of the case will serve to clarify its factual and institutional framework in greater detail.

The analysis pursues a twofold objective: first, to demonstrate how the Kantian deontological framework may provide critical tools for understanding and evaluating the choices made by the legislator and the Constitutional Court; and second, to assess whether, and to what extent, the Categorical Imperative may serve as a normative

criterion capable of guiding constitutional interpretation and rights-balancing in cases marked by high moral and legal complexity.

After engaging with the substantive analysis of the ILVA case, the chapter will offer a methodological and argumentative perspective of the principal intersections between Kantian ethics and constitutional law, in order to clarify the interpretive lens adopted in this inquiry.

4.2 The Ilva Case: an Overview

The origins of the ILVA case are deeply rooted in the broader historical process of Italy's industrialization during the 20th century, within which the ILVA¹⁰¹ steelworks played a central role. ILVA was initially established through the merger of the leading companies¹⁰² operating in the Italian iron and steel industry at the beginning of the 1900s, culminating in the creation of the "Società Anonima ILVA" in 1906. A few years later, in 1911, the ILVA Consortium was founded, whereby the participating companies delegated the management of their plants to the new entity¹⁰³.

This industrial entity came to dominate the national production of pig iron and accounted for 58% of Italy's steel output. The outbreak of the First World War and the consequent surge in demand for metallurgical products led to the incorporation of additional affiliated enterprises into the Consortium. However, the economic crisis of 1920 - marked by a collapse in demand and share values - compelled Banca Commerciale Italiana (Comit), ILVA's principal creditor, to acquire ownership of the company. The subsequent crash of 1929 forced Comit itself to transfer its ILVA shares first to Sofindit and later to IRI (Istituto per la Ricostruzione Industriale), which became the principal shareholder in 1934¹⁰⁴.

¹⁰¹ European Parliament, Industrial Reconversion and Job Preservation: The ILVA Steel Plant Case (2019), [https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI\(2019\)644186](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2019)644186)

¹⁰² Società Elba, Alti Forni, Fonderie e Acciaierie di Piombino, Ferriere Italiane, Siderurgica di Savona and Ligure Metallurgica.

¹⁰³ The steel production centers of Portoferraio, Torre Annunziata, San Giovanni Valdarno, Bolzaneto e Sestri Ponente, Savona, Piombino, Bagnoli and Prà.

¹⁰⁴ Enrico Berbeni, "I processi dello sviluppo urbano. Gli investimenti immobiliari di Comit e Credit a Milano 1920-1950," in *Storia dell'economia italiana nel Novecento*, a cura di Giorgio Fuà e Marco Magnani (Milano: FrancoAngeli, 2010), 142.

In July 1937, IRI established the financial holding company Finsider (Società Finanziaria Siderurgica), which managed ILVA's industrial assets until the 1960s. In the post-war period, both IRI and Finsider, operating within the framework of the Marshall Plan, undertook the task of repairing wartime damages and converting steel production to meet the evolving needs of the Italian population and market - particularly in relation to housing reconstruction and the expansion of the automobile industry. Within this context of industrial expansion, driven by cost-efficiency and modernization, the Taranto steel plant was launched. The decision to establish the steel plant in Taranto was part of a broader strategy to industrialize Southern Italy, aiming to create employment opportunities and stimulate economic development in the region¹⁰⁵.

The construction began in the early 1960s, transforming Taranto into a significant industrial hub. In 1961, the merger between ILVA and Cornigliano - another leading Italian steel company - gave rise to Italsider, which was at the time considered one of the most promising steel producers in Europe in terms of production capacity¹⁰⁶. During its expansion, the steel plant engaged in international agreements to secure essential resources.

Notably, a confidential agreement between the USSR, ENI and Finsider facilitated the exchange of Soviet crude oil for Italian steel pipes, ensuring a steady supply of raw materials critical for the plant's operations¹⁰⁷. Upon completion, the Taranto steel plant spanned approximately 15 million square meters, making it one of the largest industrial complexes in Europe. It was designed with an annual production capacity of up to 10 million tonnes of steel, positioning it as a central player in meeting the demands of Italy's booming economy during the post-war period.

During the 1960s, ILVA was at the centre of Italy's state-led industrial policy: the expansion of the Taranto site and the consolidation of national production aimed to reduce

¹⁰⁵ European Environment Agency, Environmental Conflicts in Europe — The Ilva Case Study, EEA Report No 10/2014.

¹⁰⁶ In 1968, Italsider reported a turnover exceeding 554 billion lire, with an output of 7.4 million tonnes of pig iron and 8.7 million tonnes of steel - accounting for 94% and 51% of the respective national productions. The company entered the 1970s with production forecasts ranging from 9.7 million tonnes of pig iron to over 11 million tonnes of steel.

¹⁰⁷ Massimiliano Bonne, "I colloqui tra l'Unione Sovietica e l'industria energetica italiana dal 1959 al 1961: la strategia di Enrico Mattei e i suoi risvolti sulla politica internazionale," VisibleInvisible, 2019, <https://visibleinvisible.eu/40/>

Italy's dependency on foreign steel and support internal economic growth. The establishment of the steel plant significantly influenced the urban landscape of Taranto, particularly the Tamburi district¹⁰⁸. Originally a residential area, Tamburi underwent rapid urbanization to accommodate the influx of workers and their families, leading to the development of housing and infrastructure closely tied to the plant's operations.

However, the market crisis of 1975 frustrated the expectations of both Finsider and Italsider, which had heavily invested in the economic doubling of the Taranto plant. The further crisis of the 1980s forced a dramatic contraction in productivity and employment levels, triggering the privatization and liquidation of several consortium companies. During this phase of return to private ownership, the Cornigliano plant was sold to Cogea, whose controlling interest was soon acquired by the Riva Group¹⁰⁹. In 1995, the Riva Group proceeded to acquire the entirety of ILVA, thereby securing a monopolistic position and emerging as a dominant actor in the Italian and European steel industry. At its peak, the Taranto plant accounted for a significant share of Italy's steel output, with over 20,000 employees and a crucial role in both domestic infrastructure and European industrial supply chains.

In the early 2000s, European Union environmental legislation, rooted in a logic of sustainable development, along with growing public awareness and concern over environmental issues, led to a significant shift in the political and social climate, surrounding the harmful emissions of dioxins and benzo(a)pyrene released into the atmosphere by the ILVA plants in Genoa and Taranto¹¹⁰.

This turn of events, which led to the closure of the Genoa plant in 2005 and the judicial seizure of the Taranto facility in 2012¹¹¹, also marked the beginning of the long and complex judicial saga concerning Ilva - one that still remains unresolved and ongoing to this day.

¹⁰⁸ Maria M. C. Pappalardo, *La città di Taranto e l'industria: Dall'acciaieria ILVA all'urbanizzazione del quartiere Tamburi* (Taranto: Edizioni Altrimondi, 2015), 102.

¹⁰⁹ Giovanni Di Lorenzo, *La Storia della Siderurgia Italiana* (Milano: Mondadori, 2000), 215.

¹¹⁰ Italian National Institute of Health (ISS), *Studio SENTIERI* (2019)

¹¹¹ European Court of Human Rights, *Cordella and Others v. Italy*, App. Nos. 54414/13 and 54264/15, Judgment of 24 January 2019, HUDOC.

The legal proceedings were triggered not only by suspicions of dioxin poisoning, which culminated in the Ambiente Svenduto trial before the Corte d'Assise of Taranto in May 2017¹¹², but also, and even earlier, by the judgment of the Court of Justice of the European Union (commonly referred to as the Luxembourg Court) issued on the 30th of March 2011, wherein Italy was found in breach of European Union law¹¹³. This ruling initiated a series of investigations, criminal proceedings and consequential chain reactions.

In the meantime, the Ilva plant continued to experience significant economic and managerial difficulties. In 2013, the Italian government decided to intervene directly in the company's operations, placing Ilva under extraordinary administration. In 2017, the company was sold to the steel giant ArcelorMittal, which undertook to restore Ilva's economic viability and address its severe environmental shortcomings¹¹⁴. ArcelorMittal subsequently announced plans to reduce the workforce, prompting strong reactions from trade unions, which voiced concern over potential job losses and the insufficient implementation of environmental remediation measures.

In 2019, ArcelorMittal threatened to withdraw from the acquisition, citing the Italian government's repeal of the so-called "penal shield" - a legal provision that had protected the company's management from criminal liability in connection with environmental cleanup operations¹¹⁵. Following protracted negotiations, the company agreed to maintain its commitment, albeit with further reductions in the plant's workforce.

From a constitutional perspective, the ILVA case challenges the principle of the indivisibility of fundamental rights: every measure aimed at protecting public health appears to undermine employment, while any effort to safeguard jobs risks exacerbating pollution and environmental harm¹¹⁶. As a result, a condition of "permanent balancing" has emerged between rights that, theoretically, ought to coexist harmoniously. This state of persistent tension has compelled both the legislature and the judiciary to resort to

¹¹² Investigation conducted by the task force led by then-chief prosecutor Sebastio.

¹¹³ Court of Justice of the European Union, *Commission v. Italy*, Case C-50/10, ECLI:EU:C:2011:636, Judgment of 6 October 2011, <https://curia.europa.eu/juris/document/document.jsf?docid=111161>

¹¹⁴ European Commission, "Mergers: in-depth review of ArcelorMittal/Ilva deal," press release, July 5, 2017, https://europa.eu/rapid/press-release_IP-17-4485_en.htm

¹¹⁵ *Ibidem*.

¹¹⁶ Soricelli, Gerardo. "Il caso ILVA di Taranto e l'emergenza Covid-19 nell'ambiguità del bilanciamento dei diritti fondamentali." *Gruppo di Pisa 2* (2022): 55–78.

extraordinary measures, thereby revealing - albeit indirectly - the structural limitations of the constitutional system when confronted with tragic conflicts.

The following analysis does not seek to deliver a definitive judgment on the merits of the solutions adopted, but rather aims to examine the ILVA case as a paradigmatic example through which to explore, on the one hand, the tensions between constitutional principles and, on the other, the inherent difficulty of balancing conflicting interests in a manner that is both rational and non-arbitrary. The subsequent sections will examine in detail the legal and ethical implications of the case.

4.3 Legal and Ethical Issues

The Court of Justice of the European Union (CJEU) has held that Italy failed to comply with a number of obligations arising from EU environmental and occupational safety law, specifically in relation to the management of the Ilva steel plant in Taranto¹¹⁷.

Directive 2008/1/EC concerning integrated pollution prevention and control (IPPC) requires that industrial installations with a high potential for environmental harm may operate only upon obtaining an Integrated Environmental Authorization (Autorizzazione Integrata Ambientale - AIA)¹¹⁸. Such authorization must ensure the application of the Best Available Techniques (BAT) to minimize emissions into air, water and soil. Italy was found in breach of this directive by the CJEU in its judgment of 31 March 2011¹¹⁹ for:

- failing to issue the necessary AIA to all existing installations by the mandatory deadline of 30 October 2007.
- adopting Decree-Law No. 180/2007¹²⁰, which extended the compliance deadline to 31 March 2008.

¹¹⁷ Laus, Federico. "La saga Ilva all'attenzione della Corte di Giustizia: riflessioni su condizioni di autorizzazione, riesame delle misure e responsabilità politica nella gestione del rischio ambientale e sanitario." *Corti Supreme e Salute* 1 (2024): 39–85.

¹¹⁸ Direttiva 2008/1/CE del Parlamento europeo e del Consiglio del 15 gennaio 2008, *Gazzetta ufficiale dell'Unione europea*, L 24, 29 gennaio 2008, 8–29, <https://eur-lex.europa.eu/legal-content/IT/TXT/?uri=CELEX%3A32008L0001>

¹¹⁹ Commissione europea c. Repubblica italiana, causa C-50/10, sentenza della Corte di giustizia dell'Unione europea (Sezione Settima) del 31 marzo 2011, <https://eur-lex.europa.eu/legal-content/IT/TXT/?uri=CELEX%3A62010CJ0050>

¹²⁰ Decreto-Legge 30 ottobre 2007, n. 180, "Differimento di termini in materia di autorizzazione integrata ambientale e norme transitorie," *Gazzetta Ufficiale della Repubblica Italiana*, Serie Generale n. 254, 31

- transmitting the relevant data to the European Commission only in October 2009, thus significantly exceeding the time limits prescribed by the directive.

Additional delays were formalized through Legislative Decree No. 155/2010¹²¹, which postponed the entry into force of the emission limit values to 2012. These legislative measures became known collectively as the “Ilva safeguard decrees”.

Italy was also found to be in non-compliance with Directive 89/391/EEC¹²², which mandates Member States to ensure the protection of workers’ health and safety in the workplace. The persistent and serious emissions of harmful substances from the Ilva plant, coupled with the absence of adequate preventive measures, constituted a systemic breach of the directive’s requirements concerning risk prevention and worker protection.

Under Directive 2004/35/EC on environmental liability¹²³, based on the “polluter pays” principle, operators of hazardous activities, such as steel production, are subject to strict liability for environmental damage or imminent threats thereof. Accordingly, the operator of the Ilva plant could be held accountable for pollution incidents due to the inherently dangerous nature of the activity.

The situation was further aggravated by a note issued by the Ministry of the Environment on 14 April 2009, in which it informed the European Commission that it did not possess up-to-date official data on the AIA issued nationwide, attributing the delay to the regional authorities¹²⁴. However, competence for issuing AIA for installations of national interest rested exclusively with the Ministry, rendering this justification legally untenable.

ottobre 2007,
https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.codiceRedazionale=007G0196&atto.dataPubblicazioneGazzetta=2007-10-31

¹²¹ Decreto Legislativo 13 agosto 2010, n. 155, "Attuazione della direttiva 2008/50/CE relativa alla qualità dell'aria ambiente e per un'aria più pulita in Europa," Gazzetta Ufficiale della Repubblica Italiana, Serie Generale n. 216, Supplemento Ordinario n. 217, 15 settembre 2010, <https://www.gazzettaufficiale.it/eli/id/2010/09/15/010G0177/sg>

¹²² Direttiva 89/391/CEE del Consiglio, del 12 giugno 1989, Gazzetta ufficiale dell'Unione europea, L 183, 29 giugno 1989, [https://eur-lex.europa.eu/legal-content/IT/TXT/?uri=CELEX%3A31989L0391::contentReference\[oaicite:5\]{index=5}](https://eur-lex.europa.eu/legal-content/IT/TXT/?uri=CELEX%3A31989L0391::contentReference[oaicite:5]{index=5})

¹²³ Direttiva 2004/35/CE del Parlamento europeo e del Consiglio del 21 aprile 2004, concernente la responsabilità ambientale per la prevenzione e la riparazione del danno ambientale, Gazzetta ufficiale dell'Unione europea, L 143, 30 aprile 2004, <https://eur-lex.europa.eu/legal-content/IT/TXT/?uri=CELEX%3A32004L0035>

¹²⁴ Ministero dell'Ambiente e della Tutela del Territorio e del Mare, "Nota informativa alla Commissione Europea del 14 aprile 2009," protocollo DSA-DEC-2009-0000268, pubblicata nella Gazzetta Ufficiale della

By Decree-Law No. 207/2012¹²⁵, the Italian government authorised the resumption of Ilva's production activities, despite a prior judicial seizure of the Taranto plant. The decree also provided for the issuance of a new AIA valid until March 2014, suspending, this way, the enforcement of the seizure. A similar legislative measure was later adopted through Decree-Law No. 92/2015¹²⁶, which attempted to suspend the effects of the judicial order *ex lege*. However, this latter decree was declared unconstitutional by the Italian Constitutional Court in Judgment No. 58/2018¹²⁷, which held that it violated the principles of separation of powers and legal certainty by interfering with judicial decisions.

Despite the evident regulatory and administrative shortcomings, the European Commission initially expressed support for the recovery of the Ilva plant. Between 2010 and 2012, the European Investment Bank (EIB) granted €400 million in funding, on the understanding that Ilva's restructuring would enhance international competitiveness and safeguard employment, particularly in Southern Italy¹²⁸.

Following the reopening of the Ilva steel plant, beginning in early 2013, numerous new complaints were submitted by private citizens and non-governmental organizations to both Italian authorities and the European Commission. These complaints primarily concerned noxious emissions emanating from the Taranto steelworks. In response, on the 26th of September 2013, the European Commission issued a letter of formal notice to the Italian government, urging compliance with the newly enacted Directive 2010/75/EU on

Repubblica Italiana, Serie Generale n. 106, 9 maggio 2009, <https://www.gazzettaufficiale.it/eli/id/2009/05/09/009G0065/sg>

¹²⁵ Decreto-Legge 4 luglio 2012, n. 207, "Misure urgenti per l'esercizio dell'attività d'impresa di stabilimenti industriali di interesse strategico nazionale", Gazzetta Ufficiale della Repubblica Italiana, Serie Generale n. 156, 4 luglio 2012, [https://www.gazzettaufficiale.it/eli/id/2012/07/04/012G0166/sg::contentReference\[oaicite:2\]{index=2}](https://www.gazzettaufficiale.it/eli/id/2012/07/04/012G0166/sg::contentReference[oaicite:2]{index=2})

¹²⁶ Decreto-Legge 4 luglio 2015, n. 92, "Misure urgenti in materia di rifiuti e di autorizzazione integrata ambientale, nonché per l'esercizio dell'attività d'impresa di stabilimenti industriali di interesse strategico nazionale", Gazzetta Ufficiale della Repubblica Italiana, Serie Generale n. 154, 4 luglio 2015, [https://www.gazzettaufficiale.it/eli/id/2015/07/04/015G0105/sg::contentReference\[oaicite:8\]{index=8}](https://www.gazzettaufficiale.it/eli/id/2015/07/04/015G0105/sg::contentReference[oaicite:8]{index=8})

¹²⁷ Corte costituzionale, Sentenza n. 58 del 2018, "Giudizio di legittimità costituzionale in via incidentale dell'art. 3 del decreto-legge 4 luglio 2015, n. 92", Gazzetta Ufficiale della Repubblica Italiana, Serie Generale n. 13, 28 marzo 2018, https://www.cortecostituzionale.it/actionSchedaPronuncia.do?param_ecli=ECLI%3AIT%3ACOST%3A2018%3A58

¹²⁸ Altalex. "Caso Ilva – Estratto Rivista." Altalex, 13 giugno 2018. <https://www.altalex.com/documents/news/2018/06/13/caso-ilva-estratto-rivista>

industrial emissions and large combustion plants (commonly referred to as the Industrial Emissions Directive - IED), which repealed and replaced the former IPPC Directive¹²⁹.

Laboratory tests conducted on behalf of the European Commission confirmed severe pollution of the air, water and soil traceable to Ilva's industrial activities. The pollution extended not only to the steelworks' premises, but also to the adjacent residential areas of Taranto, in particular the Tamburi district, which experienced the most acute environmental and health impacts¹³⁰.

In addition to the failure to transpose the IED within the prescribed timeframe, the Commission also identified a systemic lack of monitoring and regulatory enforcement by Italian authorities concerning the operational compliance of the Ilva plant. As a result, on 16 October 2014, having received no satisfactory response to its initial notice, the Commission issued a Reasoned Opinion pursuant to Article 258 TFEU, formally identifying the following breaches of EU law¹³¹:

- The failure to reduce emissions generated by the steel production process.
- The inadequate monitoring of soil and wastewater discharges.
- The deficient management of by-products and hazardous waste.
- The non-compliance with the Integrated Environmental Authorization (AIA) conditions as required under Directive 2010/75/EU.

The IED introduced a more stringent regime than its predecessor, the IPPC Directive. In particular, it imposed a more rigorous AIA procedure, making the issuance of such authorization strictly conditional upon the application of Best Available Techniques for pollution prevention. Furthermore, the IED mandates that operators submit a written declaration of liability for any environmental damage caused during operation.

Given Italy's prior condemnation by the CJEU for infringement of the IPPC Directive (Case C-50/10), the newly identified failures under the IED opened the door to a second

¹²⁹ European Parliament and Council. Directive 2010/75/EU of 24 November 2010 on Industrial Emissions (Integrated Pollution Prevention and Control). Official Journal of the European Union L 334, 17 December 2010, pp. 17–119. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32010L0075>

¹³⁰ Altalex, "Caso Ilva – Estratto Rivista."

¹³¹ European Commission. "Ilva viola norme Ue: Parere motivato Commissione contro Italia." Altalex, 16 ottobre 2014. <https://www.altalex.com/documents/news/2014/10/16/ilva-viola-norme-ue-parere-motivato-commissione-contro-italia>

infringement proceeding, potentially resulting in additional legal costs and financial penalties for the Italian State¹³².

In light of Ilva's deepening financial distress and its inability to allocate sufficient resources for the required environmental and technological upgrades, nor to benefit from further State aid under EU rules, the Italian government placed the company under extraordinary administration on the 21st of January 2015, pursuant to national insolvency law. Subsequently, by Ministerial Decree of 5 June 2017, issued by the Ministry of Economic Development¹³³, ownership of the plant and corporate control were transferred to Am InvestCo Italy S.r.l., the successful bidder in an international public tender process.

4.3.1 The “Ambiente Svenduto” Matter and consequential European Commission's proceedings

Meanwhile, in the wake of the criminal investigation that had led to the preventive seizure of the Ilva plant in July 2012, and of the inquiries initiated by the European Commission in 2013, formal criminal proceedings commenced in July 2015 before the Tribunal of Taranto. These proceedings addressed the death of a worker resulting from an explosion of molten material at Ilva's blast furnace AFO2¹³⁴. Subsequently, on 15 May 2017, a major criminal trial was initiated before the Assize Court of Taranto, concerning charges of environmental disaster, chemical poisoning and criminal conspiracy, in the case known as “Ambiente Svenduto”¹³⁵.

Pending the completion of the Ilva divestiture process in favour of Am InvestCo Italy, both the Royal Court of Jersey and the Federal Tribunal of Lausanne authorized the release of foreign-held assets belonging to the Riva family - the former owners of Ilva - amounting to approximately €1.3 billion¹³⁶.

¹³² Altalex, “Caso Ilva – Estratto Rivista.”

¹³³ Ministero dello Sviluppo Economico. Decreto 5 giugno 2017: Aggiudicazione del complesso industriale del Gruppo Ilva ad AM Investco Italy S.r.l. 5 giugno 2017. <https://www.mimit.gov.it/images/stories/normativa/dm-5-giugno-2017.pdf>.

¹³⁴ Altalex, “Caso Ilva – Estratto Rivista.”

¹³⁵ Corte d'Assise di Taranto, Proc. pen. n. 2585/13 R.G.N.R., udienza del 15 maggio 2017, c.d. processo “Ambiente Svenduto”.

¹³⁶ Tribunale Federale Svizzero, Decisione sulla restituzione dei fondi Riva, 2017; Royal Court of Jersey, In re Riva Group Trusts, 2017.

These assets, originally seized in 2013 by the Milan Public Prosecutor's Office in connection with other financial and criminal offenses, allegedly committed by members of the Riva family, were earmarked for environmental remediation of the industrial site and surrounding areas affected by the environmental disaster. The repurposing of these funds represents a rare instance of cross-border judicial cooperation in the field of environmental reparation and corporate accountability.

Almost contemporaneously with the initiation of the Ambiente Svenduto trial - still pending to this day - a further judicial action was brought on 17 May 2017 before the European Court of Human Rights (ECtHR) in Strasbourg. In this case, a group of residents of the city of Taranto, including individuals acting on behalf of deceased relatives and minors suffering from serious illnesses, filed a complaint alleging crimes against humanity committed in connection with the environmental degradation caused by Ilva's industrial activity¹³⁷.

According to the epidemiological report authored by Dr. Forastiere, covering the years 2013 to 2016, a significant number of residents - particularly children - developed neoplastic, cardiovascular and respiratory diseases as a direct consequence of exposure to toxic emissions from the Ilva steel plant¹³⁸. The applicants submitted that such health impacts constituted a violation of their fundamental rights under the European Convention on Human Rights, notably Articles 2, 3 and 8.

The claim did not only attribute liability to Ilva's corporate leadership for multiple offenses against human life and health, but also alleged complicity on the part of the Italian State, which, according to the complaint, failed to adopt a coherent regulatory and administrative framework capable of preventing and mitigating the devastating effects of industrial pollution. More importantly, the applicants argued that the Italian government had exacerbated the crisis by enacting a series of emergency legislative decrees, the so-called "Decreti salva Ilva"¹³⁹, which had already been subject to EU infringement

¹³⁷ Francesco Cordella e Lina Ambrogi Melle, "Ilva di Taranto, processo per lo Stato Italiano," *Corriere della Sera*, 17 maggio 2016, https://www.corriere.it/economia/16_maggio_17/non-tutelata-salute-182-cittadini-strasburgo-contro-l-italia-l-ilva-52686a2a-1c34-11e6-86d1-c1e2db24bea0.shtml.

¹³⁸ Francesco Forastiere et al., *Perizia medico-epidemiologica sugli effetti sanitari dell'inquinamento provocato dallo stabilimento siderurgico ILVA nel territorio tarantino*, Tribunale di Taranto, marzo 2012, <https://acp.it/it/2012/03/il-rapporto-sullilva-di-taranto.html>.

¹³⁹ Corte Europea dei Diritti Umani, *Cordella e altri c. Italia*, ricorsi nn. 54414/13 e 54264/15, sentenza del 24 gennaio 2019, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-190674%22%7D>.

proceedings and were criticized for introducing a form of regulatory pollution that shielded the enterprise from legal accountability.

On the basis of extensive documentary evidence - including the materials gathered during the 2012 precautionary seizure, the European Commission's 2013 investigation, and the updated Forastiere study (2016) - the European Court of Human Rights found the application to be admissible and sufficiently substantiated to warrant further examination, opening formal proceedings against both the corporate executives of the Ilva Group and the Italian State.

4.3.2 Administrative Courts' response and Jurisdictional Dispute

In an attempt to resolve what had become a legal and regulatory impasse, the Italian Government issued the Prime Ministerial Decree (D.P.C.M.) of 29 September 2017¹⁴⁰, which outlined a preliminary Environmental Remediation Plan (Piano Ilva) for the Taranto steel plant. The programme was articulated around three key priorities:

- the assessment of health damage suffered by workers and residents of Taranto.
- the decarbonisation of the polluted industrial area by the year 2023.
- full compliance with the Integrated Environmental Authorisation (AIA) requirements under the Industrial Emissions Directive 2010/75/EU (IED).

To implement this programme, the D.P.C.M. allocated a total budget of approximately €1.2 billion.

Both the D.P.C.M. of 29 September 2017 and the Decree of Award transferring ownership of Ilva to Am InvestCo Italy S.r.l. were immediately challenged before the Regional Administrative Tribunal (TAR) of Lecce by the Municipality of Taranto and the Region of Apulia. While not objecting to the remedial plan per se, the applicants primarily contested the inadequacy of the allocated financial resources, arguing that the proposed expenditures fell significantly short of the actual costs required to compensate victims of health damage and to execute a comprehensive environmental cleanup of the affected area¹⁴¹.

¹⁴⁰ Presidenza del Consiglio dei Ministri, D.P.C.M. 29 settembre 2017, Piano Ambientale per lo stabilimento ILVA di Taranto, G.U. n. 239, 12 ottobre 2017.

¹⁴¹ Altalex, "Caso Ilva – Estratto Rivista."

Independent technical assessments estimated that the total cost of health compensation and environmental remediation could exceed €3.5 billion, whereas the €1.3 billion in funds seized from the Riva family (former Ilva owners) by the Milan Public Prosecutor's Office in 2013 were deemed manifestly insufficient to meet these obligations.

At the hearing scheduled for 6 March 2018, which had been regarded as a potential turning point for reaching an agreement among the Italian Government, local authorities and the Ilva Commissioners, the proceedings were suspended following the upholding of a plea of lack of territorial jurisdiction raised by the State Attorney's Office, Am InvestCo Italy and Ilva itself. The Regional Administrative Tribunal of Lecce declared itself incompetent and referred the case to the TAR of Lazio for continuation of the proceedings. In doing so, the TAR of Apulia acknowledged the national scope of the contested measures, which justified central jurisdiction under administrative law principles.

Regardless of the forum's jurisdiction, the resolution of the dispute addresses a core issue: namely, the insufficiency of the Prime Ministerial Decree of 29 September 2017 to either provide an effective remedy for the environmental disaster or to establish a realistic path to the industrial site's operational recovery. While the proceedings remain in abeyance before the TAR of Lazio, the situation is effectively in a legal and administrative stalemate, with prospects of resolution relying upon the negotiation of an institutional agreement between the Government and local entities. The content of such an agreement would need to be incorporated into the contractual clauses governing the engagement with Am InvestCo Italy¹⁴².

The prospects of reaching a resolution - through what has been termed the "Ilva Roundtable" - are contingent upon the acceptance by the Municipality of Taranto and the Apulia Region of the health protection conditions stipulated in the Protocol annexed to the D.P.C.M. of 29 September 2017.

However, such acceptance remains in turn conditional upon the provision of financial guarantees for both the decarbonisation of the plant and the environmental remediation

¹⁴² ArcelorMittal. "AM InvestCo Italy Sends Withdrawal and Termination Notice for Ilva Lease Agreement." ArcelorMittal, November 4, 2019. <https://corporate.arcelormittal.com/media/press-releases/am-investco-italy-sends-withdrawal-and-termination>.

of the surrounding area. In the absence of such guarantees, the petitioning entities have expressed their unwillingness to engage, raising the risk of a renewed impasse - all while the citizens and workers of Taranto continue to await justice¹⁴³.

4.3.3 Labour Rights, Isopensione and Occupational Health

Amidst this regulatory, administrative and judicial chaos, the fate of the ILVA workers in Taranto has become a central concern. In this context, the Government proposed the use of “isopensione” as a protective mechanism. Introduced by the Fornero Law and strengthened by the most recent Budget Law, which extended its coverage from four to seven years, isopensione serves as an alternative to voluntary redundancy and could be employed to manage the workforce reductions resulting from the restructuring of ILVA.

According to governmental estimates, the number of workers eligible for isopensione would be approximately 4,000, compared to Am InvestCo’s proposal to rehire 10,000 employees, subject to modification through ongoing collective bargaining negotiations.

For those not absorbed by Am InvestCo, the Government promised employment continuity through ILVA’s extraordinary administration, unemployment benefits (Cassa Integrazione) - for which €24 million were allocated under the Budget Law - or re-employment in environmental remediation work at the Taranto plant. However, neither prolonged recourse to unemployment benefits nor indefinite assignment to remediation tasks can be regarded as sustainable solutions. Both are considered “holding measures”, and they raise the familiar issue of financial and employment sustainability.

Beyond the selection of appropriate labour policy tools or incentives, one of the fundamental conditions for resuming industrial activity must be the protection of workers’ health. Reintegrating work force into the plant without first securing environmental and workplace remediation would expose them, once again, to particulate emissions and heightened risks of occupational illness.

ILVA workers are therefore confronted with a tragic dilemma: either maintain their jobs in a potentially toxic environment or protect their health at the cost of unemployment. This dilemma is further complicated by the European Commission’s proposal of 31

¹⁴³ Altalex, “Caso Ilva – Estratto Rivista.”

October 2017 to revise the Directive on occupational safety and health (OSH), specifically regarding the occupational exposure limit values (OELVs) for carcinogenic agents: a move that could impose stricter regulatory thresholds and pose additional obstacles to the reopening of the plant¹⁴⁴.

4.4 A Kantian Perspective on the Ilva Case

The Ilva case constitutes one of the most controversial expressions of the conflict between fundamental rights in recent Italian constitutional history. At the centre of the debate are the right to health, the right to a healthy environment and the right to work: interests that are all constitutionally protected, but which in the Taranto affair have found themselves in a relationship of systematic tension, often without a legally stable and morally shared solution.

In this section, the analysis focuses on the theoretical application of the principles of the Kantian categorical imperative to the Ilva case, with the intention of providing an alternative ethical-constitutional key to the usual instruments of jurisprudential balancing. The three formulations of the imperative - the principle of universalizability, the dignity of the person as an end in itself, and the ideal of the kingdom of ends - will be used as critical criteria to question the moral legitimacy of the choices made by public institutions in managing the conflict between industrial production and the protection of fundamental rights.

The purpose is not to offer a legal or technical solution to the case, but to assess whether the conduct and decisions taken against the community of Taranto can be considered compatible with a conception of constitutional legality that does not limit itself to mediating between opposing interests, but recognises in the individual and in his moral freedom an imperative purpose of public action.

The analysis will be conducted according to the three formulations of the categorical imperative, each of which offers a distinct perspective for interpreting the ethical tensions of the Ilva case. The principle of universalizability will be applied to economic and

¹⁴⁴ *Ibid.*, 56

industrial policy choices, questioning whether a course of action that favours productive continuity despite its destructive effects can be rationally thought of as a universal norm. The second formulation, which dictates that every human being should always be treated as an end and never as a mere means, will be used to examine the working and health conditions of the employees and inhabitants of the Tamburi district, assessing whether they have been sacrificed in the name of collective goals. Finally, the ideal of the realm of ends will offer a key to considering the environmental issue as a moral duty that transcends the individual and involves the entire political community, positing sustainability as a prerequisite for a fair coexistence between generations and autonomous moral ends.

4.4.1 Universalizability and Economic Policy Decision-Making

The first principle of the Kantian categorical imperative, that of universalizability, claims how each maxim of action must be able to be assumed as a universal law by all rational agents, without logical or moral contradiction. In the institutional sphere, this criterion requires that public choices must be justifiable not only for their effectiveness, but also for their normative and moral consistency: they must be able to apply equally to anyone, in any similar context.

Applied to the Ilva case, this principle offers a critical point of observation with regard to the economic policies adopted by the Italian state. The legislative and administrative decisions taken to ensure the plant's continued production - despite the serious consequences for public health and the environment - are based on an implicit maxim: it is morally acceptable to sacrifice fundamental rights in the name of economic and employment stability, when there are general interests to be protected. If this maxim were universalised, it would justify the possibility for any government to derogate from the protection of primary goods whenever economic production or industrial competitiveness required it.

However, such a generalisation leads to a normative contradiction: turning this logic universal means undermining the very coherence of the constitutional order, which is founded on the protection of inviolable rights and the principle of equality. If it were legitimate to suspend the protection of health or the environment in any context of crisis, these rights would lose their non-derogable character and become disposable, politically

negotiable goods. In Kantian terms, this would represent a contradiction in conception, since the very idea of rights would cease to have universal value.

Moreover, no rational community could want to live under a regulatory system that, in emergency situations, authorises the sacrifice of minimum living conditions in the name of productive priorities. Even from the point of view of rational will, then, the maxim that guided public action in the Ilva case fails the test of universalizability.

The normative choices adopted (such as the save-Ilva decrees, the extensions to the AIA, or the reinstatement of production despite judicial seizures) do not respond to criteria that can be extended in a generalisable way, because they violate the stability of fundamental guarantees and institute a logic of permanent exception, contrary to the assumptions of formal justice and constitutional legality. The principle of universalizability, on the other hand, demands a systemic consistency of norms, such that exceptions do not become the rule, and rights are not subordinated to economic expediency.

Accordingly, assessed in light of the first principle of the categorical imperative, state conduct in the Ilva case does not meet the requirements of universal morality and rationality. Economic-political decisions, in order to be legitimate from a Kantian perspective, must be based on maxims that can apply to everyone without undermining the normative structure of rights, and must reject the idea that efficiency justifies the compression of legality. Only an action that conforms to universalizable principles can be considered morally and legally valid.

4.4.2 Human Dignity and the Right to Health

The second formulation of the Kantian categorical imperative requires treating humanity, “both in its own person and in that of every other, always also as an end and never simply as a means”. This is an ethical formulation that has had an enormous influence on modern constitutions, including the Italian one, in which the personalist principle is a cornerstone of the system of fundamental rights. Article 32¹⁴⁵, in particular, recognises health as a right of the individual and an interest of the community, highlighting how the psycho-

¹⁴⁵ Costituzione della Repubblica Italiana, art. 32, Senato della Repubblica, accessed May 7, 2025, <https://www.senato.it/istituzione/la-costituzione/parte-i/titolo-ii/articolo-32>.

physical well-being of the person is an essential element for the protection of his or her dignity.

In light of this principle, the choices made in the Ilva case raise crucial questions: to what extent can the State subordinate the right to health to other needs, such as continuity of production and employment? And, above all, do such choices respect the moral obligation to consider each citizen as an end in itself?

The scientific and health evidence on the environmental contamination caused by the Taranto plant - an increase in cancers, respiratory diseases, childhood illnesses - shows that residents and workers have been exposed to harmful conditions for years without adequate protection. Public policies, rather than structurally addressing the problem, have favoured temporary solutions, postponing interventions and extending authorisations despite the damage already ascertained.

This dynamic shows how entire groups of people have been instrumentalised: not treated as subjects with dignity, but as mere means to a collective end. In particular, the residents of the Tamburi district and the plant workers found themselves in a tragic conflict between the right to work and the right to health, without the state taking full responsibility for offering alternative solutions that respect the individual.

Treating the individual as an end in itself implies, on the other hand, that no political choice can intentionally sacrifice people's health, safety and lives for the benefit of others. The legislator has a moral, as well as a legal, duty to act in such a way that every individual involved in public decisions is respected in his or her integrity, and not reduced to a dependent variable of productivity or industrial competitiveness.

In the Ilva case, such responsibility has failed. The appeal to employment and the national interest has all commonly served to justify measures that have suspended or restricted the most basic rights, placing individuals outside the space of constitutional respect. Yet, if dignity is taken as the guiding value of public action, every policy must be evaluated not only for the results it achieves, but for the way it treats the people involved.

The Kantian principle of dignity, in its most demanding formulation, requires the rejection of any political utilitarianism that justifies the sacrifice of some for the welfare of others. In this perspective, the Ilva case is not just a technical or legislative failure, but a moral

crisis: an evidence that, without a stable reference to the dignity of the person, even the most evolved constitutional systems can tolerate injustice.

4.4.3 The Kingdom of Ends and Environmental Responsibility

In Kantian ethical thought, the concept of the Kingdom of Ends represents the most fully realized expression of the moral imperative. It delineates an ideal community of rational beings, wherein each individual is not only treated as an end in themselves, but also acts as a universal legislator of shared moral principles. In other words, it constitutes a normative model that reconciles individual autonomy with collective rationality, outlining a vision of society in which each person is simultaneously the subject and author of the moral law. Within this horizon, no individual may be treated merely as a means, and every action must be compatible with the idea of a just, universal, and commonly accepted order.

Applying this conception to the field of public policy entails a radical shift in perspective: the legislator can no longer act according to partial or contingent logics but must conceive their decisions as part of a shared project of justice and mutual respect. In this light, the Kingdom of Ends functions as a demanding yet indispensable criterion for assessing the morality and legitimacy of political action. When it comes to environmental responsibility, this criterion becomes even more stringent: the environment is the concrete arena in which relationships between generations, between vulnerable subjects, and between interdependent communities are manifested. Environmental destruction does not merely constitute material harm; it is a structural violation of the moral duty owed to others, both present and future.

In the case of Ilva, the absence of a political vision consistent with the principle of the Kingdom of Ends is starkly evident. The decisions taken by the Italian State - aimed at safeguarding productive continuity at the expense of public health and environmental integrity - reflect an emergency-driven logic focused on short-term management rather than the construction of a just and sustainable order. The persistent abandonment of ecologically responsible industrial policies, the lack of a credible plan for conversion, and the marginalization of local communities in decision-making processes point to a profound divergence from the Kantian model: the other is not treated as a moral legislator but as a passive object of others' decisions.

Conversely, the principle of the Kingdom of Ends demands every subject to be acknowledged as a participant in the construction of normative frameworks and, thus, as a co-author of the policies that shape their life. This requires transparency, democratic participation, attentiveness to local demands and respect for the planet's ecological limits. In the reality of the Ilva case, these conditions have been systematically disregarded. The affected communities have been persistently excluded from deliberative processes, reduced to silent recipients of state-imposed decisions and compelled to endure the consequences of a mode of production that is unsustainable both environmentally and humanly.

Within this context, environmental responsibility emerges not merely as a political or legal duty, but as a fundamental moral imperative grounded in the Kantian conception of the person. The environment cannot be treated as a resource to be exploited according to economic logics; rather, it is a common good whose protection is essential to the respect of others' dignity. To pollute the environment is to undermine the basic conditions for the exercise of freedom and health, thus violating others' right to be treated as ends. More profoundly, environmental irresponsibility represents a breach in the moral reciprocity between generations: a just society cannot be conceived if present choices irrevocably compromise the possibility of a dignified life for future ones.

From this standpoint, the notion of sustainability acquires full ethical significance: it is not merely a matter of preserving economic balances or limiting environmental damage, but of acting according to principles that every rational being could will as universal law. This is precisely what Kantian ethics requires: to act in such a way that the maxim of one's action could be shared by all, without domination or injustice. The Ilva model of production, as sustained by normative decisions over recent decades, fails to meet this standard. It is based on a radical asymmetry between those who decide and those who endure, between those who profit and those who suffer the consequences.

The Kingdom of Ends is therefore fundamentally incompatible with political actions that perpetuate environmental violation in the name of economic interest, without constructing sustainable alternatives and without recognizing the rights of those who inhabit contaminated territories. In this sense, the Ilva case is not merely an environmental or health crisis - it is a profound ethical rupture that implicates collective responsibility

toward both the environment and humanity. The choice either not to act or to act solely in defence of industrial continuity is not a neutral one: it constitutes an exclusion of the other from the Kingdom of Ends, treating them as means rather than as ends in themselves.

The aforementioned Kantian principle compels a radical rethinking of how environmental policies are conceived and implemented, requiring every decision to be compatible with the dignity of all the people affected, present and future, and no human being to be sacrificed on the altar of efficiency or convenience. Environmental responsibility, from this perspective, is not a luxury reserved for more favourable times, yet a moral imperative which tests the justice of institutions and the credibility of the law.

4.5 Analysis of the Constitutional Court's Rulings on the Ilva Case

Having established how the core principles of Kantian ethics can offer a compelling normative framework for constitutional balancing, this section turns to the jurisprudence of the Italian Constitutional Court in the ILVA case. The ILVA jurisprudence reveals, in fact, a noteworthy alignment with deontological standards: the application of Kantian ethics in such context finds concrete resonance in the Court's approach to resolving the existing tension in the analysed setting, concerning the right to health, environmental protection and economic freedom.

Such analysis aims to highlight how, in navigating a paradigmatic conflict among fundamental rights, the Court managed to preserve key ethical boundaries, maintaining a commitment to moral standards as a non-negotiable one, and adopting a reasoning which results to be compatible with a universalizable legal rationale.

In doing so, the Court's rulings do not merely reflect technical legal balancing; they embody, whether explicitly or implicitly, the deeper moral architecture underpinning the Italian constitutional order - one that, as previously argued, resonates with Kantian imperatives.

Among the most significant constitutional developments in the ILVA affair stands the Judgment no. 58 of 28 March 2018¹⁴⁶, through which the Italian Constitutional Court declared the unconstitutionality of Article 3 of Decree-Law no. 92/2015¹⁴⁷, as well as Articles 1(2) and 21-octies of the conversion Law no. 132/2015¹⁴⁸. The decision originated from a question of constitutional legitimacy raised by the GIP of the Tribunal of Taranto in relation to the preventive seizure of blast furnace AFO2, whose reopening - made possible by the contested emergency legislation - resulted in the death of a worker, thus giving rise to a paradigmatic conflict between the right to health and the imperative of industrial continuity.

In its reasoning, the Court offered a lucid critique of the legislative technique adopted, characterizing the normative process as “tortuous and anomalous”. Particular attention was drawn to the fictitious abrogation of the contested provision, rendered ineffective by a simultaneous clause of salvific effect (art. 21-octies), which had the consequence of perpetuating the juridical efficacy of a provision formally abrogated before the expiration of its conversion deadline. This manoeuvre, according to the Court, effectively neutralized judicial scrutiny and entrenched a regulatory regime disproportionately favouring economic interest, to the detriment of constitutionally protected rights¹⁴⁹.

From a constitutional standpoint, the Court underscored that the right to life and to health (Articles 2 and 32 Const.), together with the right to work in safe conditions (Articles 4 and 35 Const.), are not negotiable nor hierarchically subordinate to the freedom of enterprise. Article 41 of the Constitution, although enshrining economic initiative, must be interpreted restrictively where such initiative poses a threat to the safety and physical integrity of workers. This interpretive stance was reinforced by the Court’s observation that neither Decree-Law no. 82/2015¹⁵⁰ nor the ILVA Environmental Remediation Plan

¹⁴⁶ Corte Costituzionale, Sentenza n. 58 del 28 marzo 2018, in Gazzetta Ufficiale n. 14, Prima Serie Speciale - Corte Costituzionale, del 4 aprile 2018.

¹⁴⁷ Decreto-legge 4 luglio 2015, n. 92, Misure urgenti in materia di rifiuti e di autorizzazione integrata ambientale, nonché per l’esercizio dell’attività d’impresa di stabilimenti industriali di interesse strategico nazionale, in Gazzetta Ufficiale n. 153 del 4 luglio 2015.

¹⁴⁸ Legge 6 agosto 2015, n. 132, Conversione in legge, con modificazioni, del decreto-legge 4 luglio 2015, n. 92, in Gazzetta Ufficiale n. 181 del 6 agosto 2015.

¹⁴⁹ Vivaldi, Elena. "Il caso Ilva: la 'tensione' tra poteri dello Stato ed il bilanciamento dei principi costituzionali." *federalismi.it*, no. 15 (2013): Art. 10.

¹⁵⁰ Decreto-legge 7 agosto 2015, n. 82, Disposizioni urgenti in materia fallimentare, civile e processuale civile e di organizzazione e funzionamento dell’amministrazione giudiziaria, in Gazzetta Ufficiale n. 183 del 8 agosto 2015.

of 2017¹⁵¹ provided timely or adequate measures to eliminate the ongoing danger to worker safety, thus exposing a normative omission of constitutional relevance.

Significantly, the Court reaffirmed that no constitutional right can become “tyrannical” - that is, to prevail in such a manner as to entirely suppress other constitutionally guaranteed positions which collectively give substance to human dignity. The Court invoked, for this purpose, a model of reciprocal limitation and co-essential recognition, which reflects a theoretical structure akin to the Kantian “Kingdom of Ends”: a moral and legal order in which each individual is treated not merely as a means to economic or collective ends, but as a legislative agent endowed with equal and inalienable moral worth.

The methodological criterion employed by the Court, being the insistence upon a “reasonable and balanced” assessment of conflicting rights, resonates with the first formulation of Kant’s Categorical Imperative (universalizability), in that it requires legal norms and legislative exceptions to be rationally generalizable and morally coherent. Simultaneously, the Court’s firm stance against the instrumentalization of human life and labour conditions echoes the second formulation of the imperative: the imperative to treat humanity, in oneself and in others, always as an end and never merely as a means.

In light of the above, the Court’s jurisprudence in this instance may be understood as an implicit actualization of deontological constitutionalism, where the ethical boundaries of rights balancing are defined not merely by proportional interests, but by the inviolability of moral principles embedded within the constitutional order. The decision therefore does not represent a departure from legal formalism in favour of abstract morality, but rather an affirmation that positive law finds its legitimacy precisely when it remains anchored to the axiological core of the constitutional text, one which, as argued in previous chapters, deeply resonates with Kantian moral philosophy and, in particular, its Categorical Imperative principle.

¹⁵¹ Piano Ambientale ILVA 2017, allegato alla Procedura di Autorizzazione Integrata Ambientale, Ministero dell’Ambiente e della Tutela del Territorio e del Mare, 30 giugno 2017.

Conclusion

This thesis has examined the potential role of Kant's Categorical Imperative as an internal ethical criterion for constitutional rights balancing in the Italian legal system. Through the reconstruction of Kantian ethics and the analysis of Italian constitutional jurisprudence, especially as reflected in the Ilva case, it has argued that Kantian principles can offer a normative framework capable of counteracting interpretative arbitrariness and strengthening the internal coherence of judicial reasoning. Rather than imposing substantive moral outcomes, this framework operates as a formal structure of justification, requiring legal norms to be universally applicable, respectful of human dignity and coherent within a rational system of rights.

The analysis of the Ilva case has demonstrated the intrinsic difficulty of reconciling competing constitutional goods - such as economic development, public health and environmental protection - within a pluralistic legal system. Yet it also revealed that the Italian Constitutional Court, although not explicitly invoking Kantian categories, often adopts argumentative strategies that are structurally compatible with them. The use of principles such as reasonableness, proportionality and non-instrumentality, as well as the growing attention to the axiological weight of certain rights (e.g. dignity, health, environment), reflects a latent moral logic that can be illuminated, and made more consistent, through a Kantian lens.

From a jurisprudential perspective, the integration of Kant's Categorical Imperative into constitutional interpretation does not imply a rejection of pluralism or an abandonment of democratic balancing. Rather, it suggests that balancing itself must be subjected to normative constraints, in order to preserve the foundational role of fundamental rights as limits to power. This means, concretely, that not every trade-off between rights and interests can be constitutionally legitimate: some compromises, such as those that treat individuals as mere means to policy goals, must be excluded in principle. In this sense, Kantian ethics can serve as a negative criterion: a limit beyond which constitutional adjudication loses legitimacy.

Methodologically, this implies that balancing techniques, though necessary in complex rights conflicts, must be anchored in a structured system of justification that includes ethical consistency, universalizability and respect for human autonomy. The Categorical Imperative does not replace, in fact, legal interpretation, but offers a rational foundation to distinguish acceptable compromises from ethically unjustifiable ones. It may also guide the development of interpretative standards that ensure greater transparency and coherence in the reasoning of constitutional courts, especially when dealing with emerging rights or socially controversial issues.

Future research may further explore how Kantian ethics can be operationalized within judicial reasoning, perhaps by developing specific tests or criteria to integrate into the structure of constitutional review. From a practical standpoint, it may contribute to the refinement of interpretative methodologies adopted by constitutional courts: the Categorical Imperative could perform as an internal consistency check within balancing operations, prompting judges to explicitly justify whether a given restriction of rights could be applied universally without contradicting the values enshrined in the constitutional order. This perspective encourages the formulation of legal arguments that are not only proportionate and reasonable, but also ethically coherent and resistant to instrumental logic.

Moreover, it could inform the drafting of judicial opinions, requiring courts to clarify not only the proportionality of a measure, but also its moral legitimacy in light of the inviolability of human dignity. In institutional terms, this approach might stimulate the development of interpretative guidelines or “moral filters” within constitutional adjudication, especially in cases involving emerging or controversial rights. Such integration does not alter the formal structure of constitutional review, but enhances its normative force, reinforcing the legitimacy of decisions in a pluralistic and rights-based legal system.

At the same time, a dialogue between moral philosophy and legal theory remains essential for defending the normative integrity of constitutional law against the risk of becoming a purely procedural tool.

In this task, Kant's Categorical Imperative does not serve as a substitute for constitutional interpretation, yet as its ethical horizon: a standard against which the justice of every legal compromise must be measured.

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